ADMINISTRATIVE
REGISTER
OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 35, NUMBER 6
MONDAY, DECEMBER 1, 2008

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The Administrative Regulation Review Subcommittee is tentatively scheduled to meet December 9, 2008 at 10 a.m. in room 149 Capitol Annex. See tentative agenda on pages 1397-1399 of this Administrative Register.

MEETING NOTICE: EARRS
The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet December 9, 2008 at 1 p.m. in room 131 of the Capitol Annex.
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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.060 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.
STATEMENT OF EMERGENCY
201 KAR 5:120E

This emergency administrative regulation establishes the criteria for an optometrist to provide services outside the optometrist's regular office for a charitable purpose. This emergency administrative regulation shall be placed into effect immediately to permit optometric services to be lawfully offered through Remote Area Medical on December 6 and 7, 2008, at the Knott County Sports Plex. Remote Area Medical shall provide healthcare services for uninsured individuals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The administrative ordinary administrative regulation was filed with the regulations compiler on November 12, 2008. The new ordinary administrative regulation and the new emergency regulation are identical.

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(New Emergency Administrative Regulation)

201 KAR 5:120E. Practice of optometry outside of regular office for a charitable purpose.

RELATES TO KRS 320.200, 320.240(4), (7), 320.310(1)(f)
STATUTORY AUTHORITY: KRS 320.240(4), (7)
EFFECTIVE: November 12, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.200 authorizes the board to regulate and control the practice of optometry in the public interest. KRS 320.240(4) and (7) requires the board to promulgate administrative regulations to reasonably regulate the profession of optometry. This administrative regulation addresses the practice of optometry outside of an optometrist's regular office for a charitable purpose in a manner that will not lead to discipline under KRS 320.310(1)(f).

Section 1. Definitions. (1) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.

(2) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.

Section 2. A Kentucky licensed optometrist may offer optometric services outside the optometrist's regular office for a charitable purpose without violating KRS 320.310(1)(f) if the following conditions are met:

(a) The charitable organization shall submit a written request to include the services of Kentucky licensed optometrists at least ninety (90) days before the optometric services are to be offered; or

(b) The board may waive the ninety (90) day deadline based on exigent circumstances that prevented the charitable organization from complying with the ninety (90) day deadline.

(2) The charitable organization shall submit proof of its nonprofit status;

(3) The charitable organization provides assurance that the participating optometrists shall not be compensated or remunerated in any manner;

(4) The charitable organization denotes the location, date, and time the optometric services will be offered, which shall not exceed seven (7) days;

(5) The charitable organization states the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;

(6) The charitable organization shall require every participating optometrist to develop and maintain a permanent patient record for each individual treated by optometrists;

(7) The charitable organization shall require every participating optometrist to comply with the minimum eye examination requirements of 201 KAR 5:040, Section 7.

DR. DENISE DOBBINS, O.D., President
APPROVED BY AGENCY: November 8, 2008
FILED WITH LRC: November 12, 2008 at 2 p.m.

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, Spindletop Administrative Building Suite 305, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables optometric services to be offered outside a regular office for charitable purposes.

(b) The necessity of this administrative regulation: This regulation is necessary to regulate the practice of optometry outside a regular office for a charitable purpose.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations to reasonably regulate the practice of optometry. The regulation states the criteria that protects an optometrist from discipline under KRS 320.310(1)(f).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides an exception for the lawless provision of optometric services outside a regular office for a charitable purpose.

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

(a) How the amendment will change this existing administrative regulation

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

(c) How the amendment conforms to the content of the authorizing statutes

(d) How the amendment will assist in the effective administration of the statutes: Comment: No responses are provided since this is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than five (5) requests annually from charitable organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The charitable organization will have to provide a written request for inclusion of optometric services by a Kentucky licensed optometrist. The organization may need to submit proof of its nonprofit status; provide assurance the optometrist will not be compensated; indicate the date, time and place of the event; state the nature of the optometric services that will be provided and the class of individuals who are intended to be the recipients of those services; and require participating optometrists to make patient records and comply with minimum eye examination requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The charitable organization will be able to offer optometric services through a Kentucky licensed optometrist.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implemen-
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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Optometric Examiners 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 320.240(4) and (7) authorizes the Board to promulgate administrative regulations to reasonably regulate the practice of optometry.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? None
   (d) How much will it cost to administer this program for subsequent years? None

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

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

STATEMENT OF EMERGENCY

810 KAR 1:025E

810 KAR 1:025E. Licensing thoroughbred racing.


EFFECTIVE DATE: November 3, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation establishes KRS 230.326(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation is to establish the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation require access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission. License categories shall include the following:

(a) Racing participants and personnel including the following: owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, race agent, farm manager or agent, veterinarian, veterinarian technician or technician, veterinarian assistant, farm manager, mutual clerk, exercise rider, stable employee, and any employee listed in Section 5 of this administrative regulation.

(b) Racing officials.

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing facilities, with job duties which require the presence anywhere on association grounds while pari-mutuel wagering is being conducted.

(d) Sole proprietors, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds.

(e) Commission employees with job duties which require their presence anywhere on association grounds; and

(f) Commission members.

(2) License applications for associations. A person or other legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. An application shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:

(a) The name and address of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown:

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(b) The name and address of persons capable of exercising any control over affairs of the association as trustee, guardian, or lessee, or mortgagee, or fiduciary;

(c) If the applicant is a corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association, a true copy of the articles of incorporation, bylaws, or other relevant documents evidencing the ownership or control of the beneficial interest in the association.

(d) The number of racing officials and persons responsible for track, security, and fire protection.

(e) The proposed purse schedule, showing minimum purses, average daily distribution, added money for each stake, if any; and

(f) The commission shall require a person working at a facility which provides information concerning timed public works to obtain a valid license issued by the commission. The executive director, chief racing steward, or their designees may refuse entry or eject any person or any horse involving any person who after requested to obtain a valid license, fails to or is unable to obtain a license.

(4) A person required to be licensed shall submit a completed written application on the form "License Application" (KHRA 25-01 (10/28)) or the Multi-Jurisdictional License Form, along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of any applicant who has applied for a license under this administrative regulation. A conditional or probationary license may be issued by the executive director, chief racing steward, or Director of Licensing upon submission of a written application.

Section 5. General License Application Requirements for All Applicants. (1) Any person, other than an association, required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(2) The application shall be made in writing on application forms and in the manner prescribed by the commission, including presentation of appropriate photo identification. An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation. The license application shall be reviewed and issued by commission personnel. The executive director, chief racing steward, or Director of Licensing shall have the authority to suspend, revoke, or otherwise modify any license granted pursuant to this administrative regulation if the application is incomplete or if refusal or denial is appropriate pursuant to Section 15 of this administrative regulation.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his agent shall result in an immediate license suspension, revocation, refusal, denial, or imposition of a fine by the commission or the Chief Racing Steward.

(4) An application from a person whose age is not readily ascertainable by commission staff shall be accompanied by an attested copy of a birth certificate or work permit showing the applicant is sixteen (16) years of age or older.

(5) An applicant for licensing shall be a minimum of sixteen (16) years of age unless otherwise specified in these regulations.

(6) An applicant may be required to submit a certified copy of his or her birth certificate. Persons under the age of eighteen (18) may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(7) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be made by the owner's parent or legal guardian in the presence of one (1) or more of the stewards.

(8) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(9) The commission shall provide notice to an applicant that the license application has been issued, denied, or refused. If all requirements for licensures are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.

(2) Stables, employees, occupational employees, vendor employees, or anyone employed in association with a racing association shall submit an application for a license to perform any necessary duties required by KHRA.

(3) A qualified person shall submit an application for a license to perform any necessary duties required by KHRA.

(4) A person employed by a racing association or its agents shall submit an application for a license to perform any necessary duties required by KHRA.

(5) A person employed by a racing association or its agents shall submit an application for a license to perform any necessary duties required by KHRA.

(6) A person employed by a racing association or its agents shall submit an application for a license to perform any necessary duties required by KHRA.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable:

(a) $150 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

(b) $100 - racing secretary, assistant racing secretary, director of racing, start, assistant racing agent, race steward, patrol judge, placing judge, timer, jockey apprentice, farmers, stewards, testing laboratory employee, racing department employee, valet, and outrider.

(c) Fifty (50) dollars - veterinary assistant, veterinary technician, veterinary technologist, vendor, mute employee, farm manager, farm agent.

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a sport or commodity and which employment requires that person's presence on association grounds during a race meeting: horse identifier, photo finish operator, film patrol crew member, television production employees, member of an association security department (including a policeman, watchman, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager or his or her employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association.

(e) Ten (10) dollars - exercise rider, special event mutual, special event vendor, special event vendor employee, stable employee, including but not limited to stable foreman, exercise personnel, hotwalker, groom, watchman, pony person.

(2) A replacement fee for a duplicate license shall be ten (10) dollars, except that the fee shall be waived for the first duplicate license issued during any calendar year.

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Section 6. Fingerprinting. A license applicant may be required to furnish to the commission a set of fingerprints or to submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previously taken fingerprints of the new fingerprinting. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-State/National Licenses. In lieu of a license application from this jurisdiction, the commission may accept an ARC Multi-State License and Information Form and the National Racing Compact form and license if these forms ensure compliance with all licensing requirements in this administrative regulation. A license applicant shall be required to pay the fee prescribed in Section 5 of this administrative regulation, in addition to any fee which may be prescribed by ARC or NRC.

Section 8. Consent to Investigate by License Applicants and Licensees. The forms of an application for a license shall authorize the commission to do the following:
(1) Investigate the criminal background, employment history, and racing history record of the applicant.
(2) Engage in research and interviews to determine the applicant's character and qualifications.
(3) Verify information provided by the applicant.

Section 9. Consent To Search and Seizure by Licensees. (1) By acceptance of a license, a licensee consents to search and inspection by the commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or KAR Title 810 or Title 811 of the Kentucky administrative regulations.
(2) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort at any location under the jurisdiction of the commission.

(c) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.

(d) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly to the best of his or her knowledge to all questions asked by the commission or its representatives pertaining to races matters.

Section 10. Approval or Recommendations by Stewards. The commission may designate certain categories of licenses which shall require the prior approval or recommendation of the stewards. If a license applicant does not meet any established category, the application shall be submitted to the executive director, chief racing steward, or Director of Licensing.

Section 11. Employer responsibility. (1) The employment or harboring of any uncensored person at a facility under the jurisdiction of the commission is prohibited, and may subject an employer to license suspension, denial, revocation, or other appropriate penalty under KRS Chapter 230 or KAR Title 810 or Title 811 of the Kentucky administrative regulations.

(2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including this employee's name, occupation, and reason for the discharge.

(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(4) The license application of an employee shall be signed by the employer.

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 12. Financial Responsibility. An applicant for a license may be required to submit evidence of financial responsibility to the commission and shall maintain financial responsibility during the period for which the license is issued. A license applicant's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a other jurisdiction, in any other jurisdiction, for goods, services, or fees used in the course of his or her licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. If the licensee fails to post surety for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked by the stewards until the licensee provides written documentation of satisfaction of the judgment to the stewards.

Section 13. Voluntary Withdrawal of License Application. A license applicant may withdraw his or her license application from the license review process if the applicant chooses to voluntarily withdraw his or her application, then this withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice. The stewards shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the Association of racing commissioners International.

Section 14. License Review Committee. (1) The executive director, chief racing steward, or Director of Licensing may refer a license applicant to the License Review Committee in lieu of license denial or issuance.

(2) The Committee shall be composed of the executive director of the commission, the Director of Licensing and the Chief Racing Steward.

(3) At least two (2) other members shall be selected from the racing industry.

(4) If a referral to the committee is made, then no license shall be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(5) The denial or refusal of the application shall be subject to appeal to an administrative hearing in accordance with KRS Chapter 138.

(6) The alternative, the commission, the License Review Committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 15. License Denial, Revocation, or Suspension. (1) The commission, the executive director, chief racing steward, or Director of Licensing may refuse or deny a license application, and the commission or Chief State Steward may suspend or revoke a license, or otherwise penalize a licensee, or other person, for any of the following reasons:

(a) The public interest for the purpose of maintaining proper control over horse racing meets or pari-mutuel wagering may be adversely affected if the license is issued;

(b) The license or applicant has been convicted of a felony or misdemeanor within ten (10) years preceding the date of submission of a license application with the commission;

(c) The license or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, revoked, or revoked for violation of a statute, administrative regulation, or other rule;

(d) The license or applicant is presently under suspension of a license by the legally constituted racing commission of a state, province, or country;

(e) The license or applicant has had a license issued by the commonwealth of Kentucky revoked, suspended, or denied;
(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been elected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has assaulted, attempted to cause, or participated in an attempt to cause, the pre-arrangement of a race result, or has failed to report knowledge of the kind of activity immediately to the stewards;

(k) The licensee or applicant has demonstrated financial irresponsibility by accumulating unpaid obligations, defaulting on obligations, issuing drafts or checks that are dishonored or not paid;

(l) The licensee or applicant has failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(m) The licensee or applicant has misstated or attempted to misrepresent facts in connection with the sale of a horse or other real property pertaining to racing or registration of thoroughbreds;

(n) The licensee or applicant has been charged with a criminal conduct;

(o) The licensee or applicant has been convicted of a crime involving bookmaking, betting, or similar pursuits or has consorted with a person convicted of such an offense;

(p) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or from a person having any connection with the outcome of a race, or to report conduct of that nature immediately to the stewards;

(q) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(r) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;

(s) The licensee or applicant has entered, or aided and abetted the entry of, a horse ineligible or disqualified for the race entered;

(t) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward:

1. A fire arm;
2. Any other appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;

(u) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 810 KAR 1:060;

(v) The licensee or applicant has failed to comply with a written order or ruling of the Authority, the stewards, or the judges pertaining to a racing matter or investigation;

(w) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(x) The licensee or applicant has failed to return to an association any purses, money, trophies, or awards paid in error or credited without authorization by the commission;

(y) The licensee or applicant has been intoxicated, used profanity, or engaged in fighting or any conduct of a disorderly nature on association grounds;

(aa) The licensee or applicant has used profane, abusive, or insulting language to or interfered with a commission member, commission employee or agent, or racing official, while these persons were in the course of discharging their duties;

(bb) The licensee or applicant has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official duties;

(cc) The name of the licensee or applicant appears on the Commonwealth of Kentucky Revenue Cabinet's most recent tax warrant list, and the licensee or applicant's delinquent tax liability has not been satisfied;

(dd) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(ee) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(ff) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(gg) The licensee or applicant has failed to pay any required fee or fine, or has otherwise failed to comply with Kentucky statutes or administrative regulations;

(hh) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the Chief State Racing Steward;

(ii) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 17 of this administrative regulation;

(jj) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;

(kk) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;

(ll) The licensee or applicant has aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;

(mm) The licensee or applicant has employed or harbored an unlicensed person required by these administrative regulations to be licensed;

(nn) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 810 KAR 018, Section 3(5)
2. A medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission;

(oo) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge;

(pp) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward, and to the ARC or the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial;

(qq) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS Chapter 138.

Section 16. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or elected from a racetrack in Kentucky or another jurisdiction, the commission may require reinstatement at that track before a license shall be granted by the commission.

Section 17. Changes in Application Information. (1) During the period for which a license has been issued, the license shall report to the commission changes in information provided on the license application, including but not limited to the following:

(a) Current legal name;

(b) Marital status;

(c) Permanent address;

(d) Pending criminal complaints;

(e) Criminal convictions;

(f) License denials and license suspensions of ten (10) days or more in other jurisdictions;

(g) License revocations or fines of $500 or more in other jurisdictions;

(h) Racing related disciplinary charges in other jurisdictions;
(1) Withdrawal, with or without prejudice, of a license application by the licensee in any lunsctz;on.

(2) A change in application information shall be submitted in writing upon the appropriate commission form, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change.

Section 18. Temporary Licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or an application for a temporary license on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. Failure by the applicant to supply a name, social security number, and mailing address for a temporary license is grounds for refusal. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirteenth day pending completion of all licensing procedures. Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended and the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except as prohibited by Section 20 of this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest. (1) The License Review Committee and the chief state steward or their designees shall deny or refuse to process the license of a person, and the commission or the chief state steward shall revoke or suspend the license of a person, whose spouse, immediate family member, or other person in a similar relationship holds a license which the License Review Committee or chief state steward find to be a conflict of interest. A finding of a conflict of interest may be appealed to the commission pursuant to KRS Chapter 138.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, has any financial interest in a horse entered in a race, shall not be employed or licensed in that race as any of the following:
   (a) Racing official;
   (b) Assistant starter;
   (c) Practical jockey; or
   (d) Veterinary technician/veterinary technologist;
   (e) Officer or manager employee;
   (f) Track maintenance supervisor or employee;
   (g) Outsider;
   (h) Race track security employee;
   (i) Framer;
   (j) Photo finish operator;
   (k) Horsemens' bookkeeper;
   (l) Racing chemist;
   (m) Testing laboratory employee;
   (n) Jockey;
   (o) Apprentice jockey;
   (p) Jockey agent;
   (q) Veterinary technicians and veterinary assistants shall not be licensed in any other capacity that allows access to the stable area.

Section 21. License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times a current commission issued photo identification badge which is issued by the commission (photo identification badge). A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.
(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trailers, boxes, and containers of any sort.

(b) A licensee shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(d) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.

(2) Upon a finding of a positive test result for a prohibited medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall be held responsible for the test results unless the trainer can establish that the stimulant, sedative, depressant, local anesthetic, or any foreign substance was administered to the horse by another person.

Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days on which the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order other disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction, the commission may deny or revoke a license in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any statute or administrative regulation;

(3) Fabrication, misrepresentation, or omission of required information in a license application to the commission;

(4) Failure to complete ownership or beneficial interest in a horse entered to be raced;

(5) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(6) Making false or misleading statements to the commission or the stewards in an application for a license or in the course of an investigation;

(7) Failure to comply with any order or ruling of the commission, stewards, or racing officials;

(8) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, tote-selling, or gambling, or illegal enterprise, or association with any person so engaged in these activities;

(9) Applying for or receiving a license by a person less than sixteen (16) years of age;

(10) Being incompetent or unqualified in the performance of the activity for which the license is granted as determined by standard examinations prescribed by the stewards;

(11) Incestuous, lewd, or immoral conduct or any conduct of a disorderly nature on association grounds;

(12) Employment of or harboring of unlicensed persons required by these administrative regulations to be licensed;

(13) Disenrollment or ineligibility for activity for which license was issued;

(14) Possession on association grounds, without written permission from the commission or stewards, of:

(a) Firearms;

(b) Battery, buzzar, or electrical device;

(c) Any other device other than an ordinary whip which could be used to stir the ears of a horse in a race or workout;

(15) Possession on association grounds, by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission;

(16) Use of profane, abusive, or insulting language to or in the presence of a commission, stewards, or racing officials while three persons are in the discharge of their duties;

(17) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(18) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(19) Causing, or attempting to cause, or participation in any way in any attempt to cause the rearrangement of a race result, or to report knowledge of same immediately to the stewards;

(20) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(21) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

(22) Acting or abetment of any person in violation of any administrative regulation of the commission.

(23) A license may be revoked by or for a violation of any statute or administrative regulation of the State of Kentucky.

Section 4. Licenses Applications for Associations. Persons or legal entities desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. Applications shall not be acted upon by the commission until the commission has satisfied a full disclosure has been made. The application shall contain:

(1) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;

(2) Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessee, or mortgagee, or executor;

(3) Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with the degree of ownership or type of interest pertaining to the ownership or interest;

(4) Names of racing officials and persons responsible for track security and fire protection;

(5) Proposed purse schedule, showing minimum purses, average daily distribution, added money for each stake, if any;

(6) An operating report on forms prescribed by the commission if the applicant is currently licensed.

Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(b) The application shall be made in writing and application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the associa-
tion on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) An application from a person not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) An application from a person whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing the applicant is sixteen (16) years or older.

(4)(a) An application from a person, corporation, partnership, loco or other entity involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horse.

(b) An application shall not be acted upon by the commission until the commission has satisfied a full disclosure has been made.

(5)(a) An application from persons desiring to treat or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An accredited practicing veterinarian not licensed by the commission of the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.

(6) An application from a person desiring to treat or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.

(7) An application from a person not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.

(8) The following annual fees shall accompany the application and shall not be refundable.

(a) $100 — owner, trainer, assistant trainer, veterinarian, farrier, apprentice, farrier, jockey, jockey agent, racing official, steward, testing laboratory, employee, racing department employing agent, assistant secretary, assistant racing secretary, director of racing, starter, and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license.

(b) Seventy-five (75) dollars — jockey-apprentice.

(c) Fifty (50) dollars — veterinarian assistant, dental technician, stable area supply license (for suppliers of horse feed, tack, medicine, or food vendors), mullet employee, farm manager, farm agent.

(d) Twenty-five (25) dollars — association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, photo finish operator, film patrol, television, production employee, association security department including, policemen, watchmen, firemen, ambulance drivers, emergency medical technician, track superintendent, maintenance department staff, admissions department manager and employee, association concessions manager and employee, parking manager, and employee, all other persons employed by the association.

(e) Ten (10) dollars — special event mutual employee license.

(f) Two (2) dollars — stable foreman, exercise personnel, hot walker, groom, watchman, pony person and

2. Special event mutual employee license which shall be valid for the day of the event only.

(9) The fee for a duplicate license shall be ten (10) dollars.

Section 6. Licensing Committee. (1) The commission may appoint a licensing committee which may include the executive director and commission steward or their designated representative.

(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to security checks, for final action.

(3) The licensing committee may issue to a licensee an application for temporary permit to participate in the activity for which a license application was made pending administrative proceedings and final action on license application by the commission.

Section 7. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 8. Possession of License Required. A person required to be licensed by this administrative regulation shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in possession. Licenses specified under Section 6(a), (b), (c), (d), and (e) of this administrative regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times. An owner shall not be required to have a color photograph included on his or her license.

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

(a) "Licensing Application" (KRC-151000).

(b) "Race Track License Application" (KRC-161201).

(c) "Corporate Disclosure Form" (KRC-171201).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 31, 2008
FILED WITH LRC: November 3, 2008 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, 810 KAR 1.025 governs the licensing of individual participants in thoroughbred horse racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for thoroughbred racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred licensing pursuant to KRS 230. 215(2) and KRS 230.250(3) which authorize the Commission to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.290 and KRS 230.310 provide statutory criteria for the licensing of participants in Kentucky racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the conditions upon which licenses may be granted by the Commission.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for thoroughbred racing, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding thoroughbred licenses.

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

(3) List the type and number of individuals, businesses, organizations, or state or local governments affected by this administrative regulation: Approximately 17,000 thoroughbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, jockeys, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $150 will apply to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians. This fee increase will affect approximately 8,000 license applicants in these categories.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All will file an updated application in the 2009 licensing year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a fifty ($50) dollars increase in licensing fees to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice to them of the qualifications to obtain a license, and of the licensing procedure.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Operational budget of KHRC.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation will not require an increase in fees, expect as described in (4).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in (4).

(9) TIERING: Tiering does not apply because the updates in the licensing regulation shall apply to all participants in horse racing equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 230 215(2), 230.260(3), 230.290 and 230.310.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Will increase the funding for thoroughbred racing by $200,000.

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

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

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

(d) How much will it cost to administer this program for subsequent years? N/A

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

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

STATEMENT OF EMERGENCY
811 KAR 1:070E

KRS 230.260(4) grants the Kentucky Horse Racing Commission the authority to issue and establish the conditions of licensure in the Commonwealth of Kentucky. KRS 230.260(4) (which still refers to the Commission in its previously constituted form as the Kentucky Horse Racing Authority) states as follows: *Applications for licenses shall be made in the form, in the manner, and contain information as the authority may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the authority.* KRS 230.310 provides that each license issued by the Commission is effective for the duration of the calendar year in which it is issued. Due to the need for increased enforcement activities, a corresponding increase in licensing fees is warranted. This emergency regulation is necessary to allow the amended fees to apply to all licenses processed and issued for the upcoming 2009 calendar year. An ordinary regulation will not go into effect in time to allow licenses issued under the new fee structure to be issued by January 1, 2009. Since pari-mutuel horse racing will be conducted in Kentucky beginning on January 1, 2009 and on succeeding days, it is imperative that participants in Kentucky racing be licensed which will be effective on the first day of the year. This emergency regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor

ROBERT VANCE, Secretary

ROBERT M. BECK, JR., Chairman

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing
(Emergency Amendment)

811 KAR 1:070E. Licensing standardbred racing [owners, drivers, trainers, and groomers].

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission. In addition to the commission, owner/trainer/drivers, trainers, drivers, driver/trainers, and a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency, in order to participate in pari-mutuel racing in Kentucky, license categories shall include the following and others as may be established by the commission:

(a) Racing officials;
(b) Racing or non-racing personnel including the following: owner, owner/trainer, owner/driver, owner/trainer/driver, driver/trainer, authorized agent, trainer, assistant trainer, driver, farm manager or agent, veterinarian, veterinary technologist or technician, veterinary assistant, farrier, vendor, mutual clerk, stable employee, and any employee listed in Section 5 of this administrative regulation;

(c) Commission employees with job duties which require their presence anywhere on association grounds;

(d) Commission members.

Section 3. General License Application Requirements for All Applicants. (1) Any person, other than an association, required to be licensed by Section 2 of this administrative regulation and desiring to participate in standardbred racing in the Commonwealth may apply to the commission for a license.

(2) The application shall be made in writing on application forms and in the manner prescribed by the commission, including presentation of appropriate photo identification. An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 10 of this administrative regulation. The license application shall be reviewed and issued by commission personnel. The executive director, the presiding judge, or the director of licensing shall have the authority to personally review and refuse or deny a license application if the application is incomplete or if refusal or denial is appropriate pursuant to Section 15 of this administrative regulation.

(3) Information provided on or with a license application shall be complete and correct, and a representative person by a license applicant or his or her agent shall result in an immediate license suspension, revocation, refusal, denial, or imposition of a fine by the commission or the presiding judge.

(4) An application from a person whose age is not readily ascertainable by the commission shall be accompanied by an attested copy of a birth certificate or work permit showing the applicant is sixteen (16) years of age or older.

(a) An applicant for licensing shall be a minimum of sixteen (16) years of age unless otherwise specified in these administrative regulations. An applicant may be required to submit a certified copy of his or her birth certificate. Persons under the age of eighteen (18) may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. The parent under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the judges.

(5) An application from a person or entity consisting of more than one (1) individual or business entity. (a) An individual or business entity is any person or group of persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(b) The commission shall provide notice to an applicant that the license application has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Driver. A person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association, Standardbred Canada, or an appropriate international harness racing governing agency. Both licenses shall be presented to the clerk of course before driving. Bonding issuance of a valid license by the United States Trotting Association, the commission, or, at its discretion, issue a provisional or full driver's license to an applicant who qualifies under the administrative regulations.

(a) A person, age sixty (60) years or older, desiring to drive horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(b) The commission shall provide notice to an applicant that the license application has been issued, denied, or refused. If all requirements for licensure are met, a license shall be issued to the license applicant.

(2) General qualifications for a provisional (*P*) and full (*A*) driver's license. An applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall
meet the following requirements:
(a) The applicant shall not have been convicted of a crime described in KRS 335.010(1), or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.
(b) The applicant shall submit evidence of his or her ability to drive a race horse, indicating he or she is a participant in a race meet and his or her knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to a written test, shall be required to satisfactorily complete in the discretion of the presiding judge a written test before becoming eligible to obtain a license in a higher category.
(c) Special qualifications for provisional (P) driver licenses.
(a) A provisional driver license valid only for participation at fairs, matinees, qualifying races, and extended pari-mutuel meetings may be issued by the commission if the applicant meets the following qualifications:
1. The applicant has obtained at least twelve (12) satisfactory qualifying drives within a consecutive twelve (12) month period, or fifteen (15) satisfactory qualifying drives within a two (2) year period; and
2. The applicant has received the approval of the presiding judge and the District Six Track Committee.
(b) An amateur race conducted at an extended pari-mutuel track may be considered a qualifying drive.
(c) A driver holding a qualifying-fair license shall not be considered for advancement to a provisional license until he or she has had at least six (6) months of drives during every 12-month period while holding a qualifying-fair license, or has had at least 12 three (3) months of drives during every 12-month period while holding a qualifying-fair license and twenty-four (24) satisfactory qualifying drives, and he or she has the unanimous consent of the presiding judge and the District Six Track Committee.
(d) At the discretion of the presiding judge, a qualifying driver who has had satisfactory drives at fairs or in amateur races conducted at county fairs may be given credit for not more than three-fourths of those drives toward the requisite number of qualifying drives required for advancement to a provisional license.
(e) In determining an applicant's qualifications for a provisional license, the presiding judge shall consider each qualifying drive and shall not deem a drive to be unsatisfactory based solely upon the fact that the horse did not win in qualifying races.
(f) The presiding judge and the District Six Track Committee shall examine the applicant's ability to harness and equip a horse properly and to establish his or her proficiency in handling the animal.
(g) Upon satisfactory recommendations from both the presiding judge and the District Six Track Committee the applicant shall be granted a provisional license for a probationary term of fifteen (15) pari-mutuel starts.
(h) Upon satisfactory completion of the probationary pari-mutuel races as described above, and with the approval of the presiding judge, a provisional license shall be issued by the commission.
(i) Special qualifications for full (A) driver license. A full license valid for all race meetings may be issued by the commission if the applicant meets the following qualifications:
(a) Driving experience. The applicant meets one of the following experience criteria: 1. The applicant had at least one (1) year of driving experience while holding a provisional driver license, as well as twenty-five (25) satisfactory pari-mutuel starts in the twelve (12) month period beginning with the issuance of the provisional license.
2. The applicant had less than one (1) year of driving experience while holding a provisional driver license, but made at least five (5) starts while holding the license.
3. The applicant made twenty-five (25) satisfactory extended pari-mutuel starts, or starts at Grand Circuit meetings in the two (2) year calendar period preceding the date of the application.
(b) Win requirement. The applicant shall have at least ten (10) wins at extended pari-mutual meetings while holding a provisional license and shall meet the provisions of this rule, or shall have at least five (5) wins at extended pari-mutual meetings while holding a provisional license and obtain the unanimous consent of the presiding judge and the District Six Track Committee.
(c) Trainer. An applicant for a trainer license shall show proof that he or she is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in KAR 1100S and KAR 11000, Sections 1, 2, 3, 5, and 14. When any licensed trainer is absent from a racing meet for more than sixty (60) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.
(d) Veterinary personnel.
(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.
(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician, shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technologist by the Commonwealth of Kentucky, or that the person is licensed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 321.
(c) An application from a veterinarian assistant shall be accompanied by a KHRC Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him or her as required by KRS Chapter 321.
(d) A veterinarian, an application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a recognized farrier course or examination, or submit a letter of recommendation from an experienced farrier known to the judges.
(e) Stable employees, occupational employees, vendor employees, in order to obtain a stable employee, occupational employee, vendor employee, all employees appearing on the license applicant shall submit a KHRC Form 25-4 from his or her employer verifying employment and workers' compensation coverage.
(f) Special event licensees. A special event license shall be issued to employees who are employed by an association only for the duration of a special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees
(1) The following annual fees shall accompany the application and shall not be refundable:
(a) $125 - owner, trainer, driver, owner-trainer/driver, owner-driver, driver-trainer, owner/trainer, assistant trainer, veterinarian, clamping license, and temporary license.
(b) $50 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, farrier, judge, clerk of course, charter, testing laboratory employees, racing department employees, valet, and outrider.
(c) Fifty ($50) dollars - veterinary assistant, veterinary technician, veterinary technologist, vendor, mutual employee, farm manager, farm agent.
(d) Twenty-five ($25) dollars - association employees, occupational employee, vendor employees, or any person employed by a person contracting with the association to provide a service or commodity and which employment requires that person's presence on association grounds during a race meeting; photo finish opera-
tor, film patrol crew member, television production employees, member of an association security department (including a police-
man, watchman, firefighter, ambulance driver, or emergency medical
technician), track superintendent, member of maintenance department.
staff, admissions department manager or his or her employee, adjun-
ged employee or manager and employee, all other persons employed by
the association.

(d) Ten (10) dollars - special event mutual, special event occu-
pational, or special event vendor employee, including but not li-
mitied to stable foreman, exercise personal, hot walker, groom,
watchman, pony person.

(2) A replacement fee for a duplicate license shall be ten (10)
Dollars, except that this fee shall be waived for the first duplicate
license issued during any calendar year.

Section 6. Fingerprinting. A license applicant may be required
to furnish to the commission a set of fingerprints or submit to fin-
gerprinting prior to issuance of a license. If the license applicant
has been fingerprinted in the Commonwealth or another racing
jurisdiction within the five (5) years preceding the date of the li-
cense application, then the commission may accept the previous
fingerprints or require new fingerprints. The cost of fingerprinting
and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National Licenses. In lieu of a license
application from this jurisdiction, the commission may accept an
ARCI Multi-State License and Information Form and the National
Racing Compact form and license if these forms ensure com-
pliance with all licensing requirements in this administrative regu-
lation. A license applicant shall be required to pay the fee prescribed
in Section 5 of this administrative regulation. In addition to any fee
which may be prescribed by ARCI or NRC.

Section 8. Consent to Investigate by License Applicants and
Licensees. The filing of an application for a license shall authorize
the commission to do the following:

(a) Investigate the criminal background, employment history,
and racing history record of the applicant.

(b) Engage in research and interviews to determine the appli-
cent's character and qualifications.

(c) Verify information provided by the applicant.

Section 9. Consent to Search and Seizure by Licensees. (1) By
acceptance of a license, a license applicant consents to search and inspec-
tion by the commission or its agents at any location described in
KRS 250.280(3), including any training facility, and to the seizure
of equipment, vehicle, or any device in violation of state or federal law or KAR Title 810 or Title 811 of the Kentucky administrative regulations.

(2a) A license applicant consents to a reasonable search of the
property in his or her possession by the commission or its repre-
sentatives, including tack rooms, living or sleeping quarters, motor
vehicles, trucks, boxes, and containers of any sort at any location
under the jurisdiction of the commission.

(b) A licensee shall consent to the seizure of any object which
may be evidence indicating a violation of an administrative regula-
tion.

(c) A licensee shall cooperate in every way with the commis-
sion or its representatives during the conduct of an investiga-
tion, including responding correctly to the best of his or her knowledge
to all questions asked by the commission or its representatives par-
taining to racing matters.

(d) A licensee shall consent to out-of-competition testing at any
time or place designated by the commission.

Section 10. Approval or Recommendations by Judges. The
commission may designate certain categories of licenses which
shall require the prior approval or recommendation of the presiding
judge. If a license application does not match any established cat-
gory, the application shall be submitted to the executive director,
presiding judge, or Director of Licensing.

Section 11. Employer Responsibility. (1) The employment or
housing of any unlicensed person at a facility under the jurisdic-
tion of the commission is prohibited, and may subject an employer
to license suspension, denial, revocation, or other appropriate
penalty under KRS Chapter 250, or KAR Title 810 or Title 811 of the
Kentucky administrative regulations.

(2) Every employer shall report in writing to the commission or
its designee, within twenty-four (24) hours, the discharge of any
licensed employee, including the employee's name, occupation, and
reason for the discharge.

(3) Every employer shall be responsible for ensuring com-
pliance with all applicable employment laws.

(4) The license application of an employee shall be signed by
the employer.

(5) A licensed employer shall carry workers' compensation
insurance covering his or her employees as required by KRS
Chapter 342.

Section 12. Financial Responsibility. An applicant for a license
may be required to submit evidence of financial responsibility to
the commission and shall maintain financial responsibility during the
period for which the license is issued. A license applicant's failure to satisfy
a final judgment rendered against him or her by a Kentucky court,
or a determination of a judgment entered by another jurisdiction, for
fines, civil penalties, fees, fines, or interest in the course of his or her licensed
occupation, constitutes failure to meet the financial responsibility
requirements of KRS 250.310. If the license applicant is subject to a final
court judgment, or if he or she fails to satisfy the judgment, then his or her
license may be suspended or revoked by the presiding judge without formal
proceedings. The license may not be reissued until the presiding judge
confirms in writing that the applicant has satisfied all prior obligations.

Section 13. Voluntary Withdrawal of License Application. A
license applicant may withdraw an application at any time after
the application is filed. If a license applicant voluntarily with-
draws his or her application, the license application shall not consti-
tute a denial or suspension of a license and shall be without prejudice.
The applicant shall provide the applicant's signature and the
reason for withdrawal. The application shall be formally dismissed.

Section 14. License Review Committee. (1) The executive
director, presiding judge, or Director of Licensing may refer a li-
cense applicant to the License Review Committee if a license appli-
cant or licensees violate or fail to comply with the provisions of
this administrative regulation.

(2) The License Review Committee shall be composed of the
executive director, his or her designee, the Director of Licensing
or his or her designee, the presiding judge, or his or her designee,
and at least one (1) other commission member or commission staff
member designated by the executive director. At least three (3) mem-
bers of the committee shall participate in any license review
committee meeting.

(3) If a referral to the committee is made, no license shall be
issued until the license committee is made a favorable ruling on the
license application. The applicant may be required by the commis-
sion to appear personally. If the committee is unable to make a favor-
able ruling on the license application, then the committee may give
the license applicant the opportunity to voluntarily withdraw his or
her license application in accordance with Section 13 of this admin-
istrative regulation. If the license applicant does not withdraw
his or her application, then the commission shall deny the
application.

(4) The denial of the application shall be subject to appeal to
an administrative hearing in accordance with KRS Chapter 13B.

(5) In the alternative, the commission, the License Review
Committee, or the executive director may require the applicant to
pay any and all fees or costs associated with the license application.

Section 15. License Denial, Revocation, or Suspension. (1) The
commission, executive director, presiding judge, or Director of
Licensing, or any member, may refuse or deny a license application, and the
commission or the presiding judge may suspend a license, revoke, or
otherwise penalize a licensee, or other person, for any of the fol-
lowing reasons:
(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be adversely affected if the license is issued;
(b) The licensee or applicant has been convicted of a felony or misdemeanor within ten (10) years preceding the date of submission of a license application with the commission;
(c) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked for violation of a statute, administrative regulation, or other rule;
(d) The licensee or applicant is presently under suspension of a license by the legally constituted racing commission of a state, province, or country;
(e) The licensee or applicant has had a license issued by the Commonwealth of Kentucky revoked, suspended, or denied;
(f) The licensee or applicant has applied and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;
(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;
(h) The licensee or applicant has been elected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;
(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulations, or similar rule respecting horse racing in any jurisdiction;
(j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;
(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the purchase, possession, or control of any horse by a commission employee, agent, or racing official, if these persons are in the course of discharging their duties;
(l) The licensee or applicant has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official duties;
(m) The licensee or applicant has been held in contempt of court or has been enjoined or restrained in the exercise of any right or privilege essential to the proper performance of duties;
(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of standards;
(o) The licensee or applicant has been charged with criminal conduct;
(p) The licensee or applicant has been convicted of a crime involving bookmaking, betting, or similar pursuits or has consorted with a person convicted of such an offense;
(q) The licensee or applicant has offered, promised, given, accepted, or solicited any bet or any form of any money or instrument of value, or has engaged in any act of cruelty to a horse;
(r) The licensee or applicant has engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track, training facility, or satellite facility;
(s) The licensee or applicant has engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track, training facility, or satellite facility;
(t) The licensee or applicant has entered, or aided and abetted the entry of, a horse ineligible or disqualified for the race entered;
(u) The licensee or applicant has possessed on association grounds, without written permission from the commission or the presiding judge:
  1. A firearm;
  2. Any other appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;
(v) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 239 or 811 KAR 12:25;
(w) The licensee or applicant has failed to comply with a written order or ruling of the commission or the judges pertaining to a racing matter or investigation;
(x) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;
(y) The licensee or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;
(z) The licensee or applicant has participated in or engaged any conduct of a disorderly nature on association grounds which includes but is not limited to:
  1. Failure to obey the judges’ or other officials’ orders that are expressly authorized by the administrative regulations of the commission;
  2. Failure to drive when programmed unless excused by the judge;
  3. Drinking intoxicating beverages within four (4) hours of the first post time of the program on which he or she is carded to drive;
  4. Profanity;
  5. Assaults;
  6. Obscene and profane language;
  7. Smoking in the track colors during actual racing hours;
  8. Warming up a horse prior to racing without colors;
  9. Disturbing the peace;
  10. Refusing to take a breath analyzer test when directed by the presiding judge; or
  11. Failure to wear safety vest while warming up or racing;
(a) The licensee or applicant has used profane, abusive, or insulting language to the commission, a commission member, commission employee or agent, or racing officials, while these persons are in the course of discharging their duties;
(b) The licensee or applicant has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official duties;
(c) The licensee or applicant appears on the Commonwealth of Kentucky Revenue Cabinet’s most recent tax warrant list, and the applicant’s delinquent tax liability has not been satisfied;
(d) The licensee or applicant is disqualified for the duties for which the license is issued;
(e) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;
(f) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;
(g) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with Kentucky statutes or administrative regulations;
(h) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the presiding judge;
(i) The licensee or applicant has failed to advise the commission of changes in the applicant information as required by Section 17 of this administrative regulation;
(j) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;
(k) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;
(l) The licensee or applicant has aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;
(m) The licensee or applicant has employed or harbored an unlicensed person required by these administrative regulations to be licensed;
(n) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:
  1. A hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by KAR Title 811; or
  2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by the commission;
(o) The licensee or applicant has manufactured, attempted to
manufacture, or possessed a false license photo identification badge.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the presiding judge and to the ARPIC by the Division of Licensing, whereby other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A license applicant may appeal the suspension, revocation, or denial in accordance with KRS Chapter 13B.

Section 16. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or ejected from a race track in Kentucky or in another jurisdiction, the commission may require reinstatement at that track before a license shall be granted by the commission.

Section 17. Changes in Applicant Information. (1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license application, including the following:
   (a) Current legal name;
   (b) Marital status;
   (c) Permanent address;
   (d) Pending criminal complaints;
   (e) Criminal convictions;
   (f) License denials and license suspensions of ten (10) days or more;
   (g) License revocations or fines of $500 or more in other jurisdictions;
   (h) Racing related disciplinary charges in other jurisdictions;
   (i) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

(2) A change in application information shall be submitted in writing upon the appropriate commission form, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change.

Section 18. Temporary Licenses. (1) Only one owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or an application for a temporary license on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. Failure by the applicant to supply a name, social security number, and mailing address for a temporary license is grounds for refusal. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirty-day period following the completion of all licensing procedures. Upon expiration of a thirty (30) day temporary license, the owner's license shall be suspended or the horse's ownership shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all licensing procedures shall extend the owner's license to the end of the calendar year.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except when prohibited by Section 20 of this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest. (1) The License Review Committee and the presiding judge or their designees shall deny or refuse to process the license of a person, and the commission or the presiding judge shall revoke or suspend the license of a person, whose spouse, immediate family member, or other persons in similar relationship holds a license when the License Review Committee or presiding judge finds to be in a conflict of interest. A finding of a conflict of interest may be appealed to the commission pursuant to KRS Chapter 13B.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, or has any financial interest in a horse entered in a race, shall not be employed or licensed in that race as any of the following:
   (a) Racing official;
   (b) Assistant starter;
   (c) Precoding veterinarian;
   (d) Veterinary technician or veterinary technologist;
   (e) Officer or manager employee;
   (f) Track maintenance supervisor or employee;
   (g) Outsider;
   (h) Race track security employee;
   (i) Farrier;
   (j) Photo finish operator;
   (k) Horsemen's bookkeeper;
   (l) Racing chemist;
   (m) Testing laboratory employee.

(4) Veterinary technicians and veterinary assistants shall not be licensed in any other capacity that allows access to the stables area.

(5) More than one (1) license to participate in racing may be granted to a person except when prohibited by this administrative regulation due to a potential conflict of interest.

Section 21. License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association or ground, the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). These photo identification badges are available to licensees upon presentation of appropriate, valid photo identification by the licensee to the commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The judges or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) License credentials (photo identification badges) are the property of the commission and shall be surrendered to the Executive Director, the judges, a commission Director of Security or Licensing, or their designees, upon request.

Section 22. Duties of Licenses. (1) A licensee shall be knowledgeable of these administrative regulations and, by acceptance of the license, agrees to abide by these administrative regulations.

(2) A licensee shall report to the commission any knowledge the licensee has that a violation of these rules has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the commission, and all actions by the judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the judges may be appealed to the commission, except those made by the judges as to:
   (a) Findings of fact as occurred during and incident to the running of a race.
   (b) A determination of the extent of disqualification of horses in a race or fouls committed during the race.
   (c) A license shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.
   (d) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licenses shall be required to report to the commission any known or suspected irregularities, an violation of the rules of the commission, or any wrongdoings by any person and cooperate in any subsequent investigation.

Section 23. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to elect or exclude persons, licensed or unlicensed, from association grounds.
Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Licensing Application", KHRF 25-01, 10/08;
(b) "Licensing Ownership/Control Form", KHRF 25-02, 10/08;
(c) "Change in License Information Form", KHRF 25-03, 10/08;
(d) "Declaration of Employment and Workers' Compensation Form", KHRF 25-04, 10/08;
(e) "Termination of Stable Employee Form", KHRF 25-05, 10/08;
(f) "Race Track License Application", KRC 16.1201, 10/08;
(g) "Corporate Disclosure Form", KRC 17.1201.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m., or can be viewed at www.khrc.com (Section 1.01.01.
Owners. Every person owning a horse that is entered at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. The application shall be on forms provided by the authority and shall be filed at any authority office. The license shall be presented to the clerk of the course at the time the horse is entered in a race.

Section 2.01.02. Leased Horses. Any person under lease shall race in the name of the lessee and a copay of such lease shall be filed with the authority. Any horse under lease at a race meet shall hold a lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and the lessee is a current licensee of the authority in good standing. Persons violating this administrative regulation shall be fined, suspended, or expelled.

Section 3. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. Such application shall be on forms provided by the authority. Applicants may be filed at any authority office. Such licenses shall be presented to the clerk of course before driving. Pending a valid license by the United States Trotting Association, the authority may, at its discretion, issue a provisional or full driver's license to those who qualify as set by the administrative regulations.

Section 4. Qualification for a Provisional and Full Driver's License. (1) Every applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:
(a) Not have been convicted of or a crime described in KRS 334.870(4) or any other crime which directly relates to the qualifications driving a harness horse at a race meeting.
(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, the shall include the equivalent of one (1) year's training experience. Any new applicant for a driver's license shall be approved by the presiding judge and a committee of three (3) "A" class drivers appointed by the United States Trotting Association District Six (8) Chairman.
(c) Be at least eighteen (18) years of age.
(d) Furnish a completed application form.
(e) Pass a satisfactory examination of eye vision in both eyes, or if one (1) eye-blind, at least 20/20 corrected vision in the other eye; and, when requested, submit evidence of physical and mental ability and or submit to a physical examination.
(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.
(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and its rules. In addition, any driver who previously holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.
(h) No applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.
(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:
(a) At least one (1) year's driving experience while holding a provisional license issued by the United States Trotting Association.
(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pan-mutuel meeting.
(c) A hotel or any person is involved in an accident on the track, the authority may order the person to submit to a physical examination and the examination shall be completed within thirty (30) days from the request or his license may be suspended until completion.
(d) Any person may be revoked on the reverse side of his authority's driver's license by the presiding judge.
(e) The Kentucky Racing Authority reserves the right to require any driver to take a physical examination at any time.

Section 5. Trainer's Application for a License. An applicant for a trainer's license shall submit proof that he is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 414 KAR 1-086. Sections 1, 2, 3, 5, 6, 7, and 314 KAR 1-090, Section 6.

Section 6. Absence of Trainers. When any licensed trainer is absent from a race meeting for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 7. Groom's Application for License. An applicant for a license as a groom must satisfy the authority that he possesses the necessary qualifications, both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 8. (1) The holder of a license issued by the United States Trotting Association for the calendar year shall be presumed to be qualified to receive a license.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the steward's list. If a horse is held solely for qualifying drivers, the horse may not be started. A race solely for qualifying drivers must have more than four (4) starters.

Section 9. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's or groom's licenses:
(1) Failure to obey the judge's or other officials' orders that are expressly authorized by the administrative regulations of this authority.
(2) Failure to drive when programmed unless excused by the judge.
(3) Drinking intoxicating beverages within four (4) hours of the first post time of the program on which he is entered to drive.
(4) Fighting.
(5) Assault.
(6) Offensive and profane language.
(7) Smoking on the track in colors during actual racing hours.
(8) Warming up a horse prior to racing without colors.
(9) Disturbing the peace.
(10) Refusing to take a breathalyzer test when directed by the presiding judge, deputy commission (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 10. Colors and Helmets. Drivers must wear distinguishing colors and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judges they are properly dressed. From the time it becomes necessary to wear colors before the races, no one will be permitted to jog, train, warm up or drive a horse during a race meet licensed by
the Kentucky Horse Racing Authority unless he or she is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation 1984 Standard For Protective Headgear For Use In Horse Racing. This standard is hereby incorporated by reference. Any equestrian helmet bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.

Section 12. Driver. Change. No driver, even without good and sufficient reasons, shall be disqualified or suspended, or by order of the judge.

Section 13. Amateur Driver. An amateur driver is defined as one who has never accepted any money consideration or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14. Registered Drivers. Drivers holding an "A" license or drivers with a "V" license, who formerly held an "A" license, shall register their colors with the United States Trotting Association. Registered stable or corporates may register their racing colors with the United States Trotting Association.

Section 15. Registration. Any vehicle or horse shall be registered for the year unless a registration card is presented at each starting, and shall be subject to the rules and regulations of the Kentucky Horse Racing Authority.


(2) Applications forms may be inspected, copied, or obtained at the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 31, 2008

FILED WITH LPC: November 3, 2008 at noon

CONTACT PERSON: CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2030, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, 811 KAR 1.025, governs the licensing of individual participants in standardbred horse racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for standardbred racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provides operational funds for the Kentucky Horse Racing Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs standardbred licensing pursuant to KRS 230.215(2) and 230.260(3) which authorize the commission to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.290 and 230.310 provide statutory criteria for the licensing of participants in Kentucky racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation prescribes the conditions upon which licenses may be granted by the commission.

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

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, in order to ensure that there is adequate funding for operational costs of the commission. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for standardbred racing, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding thoroughbred licenses.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,000 standardbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, drivers, stable employees, Veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees.

(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) All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $125 will apply to owners, trainers, assistant trainers, drivers, and veterinarians. This increase in fees will impact approximately 1500 license applicants in these categories.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a twenty-five ($25) dollar increase in licensing fees to owners, trainers, assistant trainers, drivers, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice to them of the qualifications to obtain a license, and of the licensing procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.

(a) Initially: N/A

(b) On a continuing basis: N/A

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Operational budget of KHRC.

(d) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

- 1406 -
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRR 230.215(2), 230.260(3), 230.290 and 230.310.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Will increase funding for standardbred racing by approximately $37,000 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? See above.

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

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

(d) How much will it cost to administer this program for subsequent years? N/A.

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

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

STATEMENT OF EMERGENCY
907 KAR 3:210E

This emergency administrative regulation is promulgated to establish acquired brain injury long term care waiver services and reimbursement provisions. This action must be enacted on an emergency basis: To prevent a loss of federal funds; and to avoid posing because an imminent threat to the health, safety and welfare of Medicaid recipients whose receipt of services may be otherwise jeopardized. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEWEN L. BESHIRE, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(New Emergency Administrative Regulation)

907 KAR 3:210E. Acquired brain injury services long term care waiver and reimbursement.


EFFECTIVE: November 10, 2008

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1).

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 citizen. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care waiver services is to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI Program" means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.

(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(4) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(5) "Acquired brain injury long term care waiver service" means a home and community-based waiver service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:

(a) An injury from a physical trauma;

(b) Anoxia or a hypoxic episode; or

(c) Allergic condition, toxic substance, or another acute medical incident.

(6) "ADHC services" means adult day health care services provided on a regularly scheduled basis that ensure optimal functioning of an ABI recipient who does not require twenty-four (24) hour care in an institutional setting.

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351; and

(b) Submitted to the department;

1. For a level of care determination; and

2. No less than every twelve (12) months.

(8) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(9) "Blended services" means a nonduplicate combination of ABI waiver services identified in Section 4 of this administrative regulation and consumer directed option services identified in Section 8 of this administrative regulation provided in accordance with the recipient's approved plan of care.

(10) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's plan of care.

(12) "Consumer" is defined by KRS 205.5605(2).

(13) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows a recipient to:

(a) Assist with the design of their programs;

(b) Choose a provider of services; and

(c) Direct the delivery of services to meet the recipient's needs.

(14) "Covered services and supports" is defined by KRS 205.5605(3).

(15) "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(16) "DCBS" means the Department for Community Based Services.

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

(18) "Family training" means providing to the family or other responsible person:

(a) Interpretation or explanation of medical examinations and procedures;

(b) Treatment regimens;

(c) Use of equipment specified in the plan of care; or

(d) Advising them how to assist the participant.

(19) "Good cause" means a circumstance beyond the control of an individual which affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected
to last sixty (60) days or less;
(b) Death or Incapacitation of the primary caregiver;
(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or
(d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual's legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.
(20) "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.
(21) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI recipient's plan of care consisting of:
(a) The ABI recipient and legal representative if appointed;
(b) A chosen ABI service provider;
(c) A case manager; or
(d) Others as designated by the ABI recipient.
(22) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).
(23) "Licensed practical nurse" or "LPN" means a person who:
(a) Meets the definition of KRS 314.011(9); and
(b) Works under the supervision of a registered nurse.
(24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).
(25) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(26) "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.
(27) "Occupational therapist" is defined by KRS 319A.010(3).
(28) "Occupational therapy assistant" is defined by KRS 319A.010(4).
(29) "Physical therapist" is defined by KRS 327.010(2).
(30) "Physical therapist assistant" means a skilled health care worker who:
(a) Is certified by the Kentucky Board of Physical Therapy; and
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.
(31) "Psychologist" or "PRN" means as needed.
(32) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
(33) "Qualifed mental health professional" is defined by KRS 202A.011(12).
(34) "Registered nurse" or "RN" means a person who:
(a) Meets the definition established in KRS 314.011(5); and
(b) Has one (1) year or more experience as a professional nurse.
(35) "Representative" is defined by KRS 205.5005(5).
(37) "Speech-language pathologist" is defined by KRS 334A.020(3).
(36) "Supervisor broker" means an individual designated by the department to:
(a) Provide training, technical assistance, and support to a consumer; and
(b) Assist a consumer in any other aspects of CDO.
(39) "Transition plan" means a plan that is developed to aid an ABI recipient in exiting from the ABI program into the community.
Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall be:
(a) Enrolled as a Medicaid provider in accordance with 907 KAR 1:671;
(b) Located within an office in the Commonwealth of Kentucky; and
(c) A licensed provider in accordance with:
1. 902 KAR 20.068, if an adult day health care provider;
2. 902 KAR 20.081, if a home health service provider; or
3. 902 KAR 20.091, if a community mental health center; or
(d) Certified by the department in accordance with 907 KAR 1:145, Section 3, or 907 KAR 3:000, Section 2, if a provider type is not listed in paragraph (a) of this subsection.
(2) An ABI provider shall comply with:
(a) 907 KAR 1:672; and
(b) 907 KAR 1:673; and
(3) An ABI provider shall have a governing body that shall be:
(a) A legally-constituted entity within the Commonwealth of Kentucky; and
(b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the safety, sanitation, and welfare of an ABI recipient served by the agency.
(4) An ABI provider shall:
(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:
1. Child;
2. Parent;
3. Sibling; or
4. Spouse;
(b) Not enroll an ABI recipient for whom the ABI provider cannot meet the service needs; and
(c) Have and follow written criteria in accordance with this administrative regulation for determining the eligibility of an individual for admission to services.
(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 pursuant to 42 U.S.C. 1320d to 1320d-8.
(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's funds:
(a) Separate accounting shall be maintained for each ABI recipient or for the recipient's interest in a common trust or special account;
(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and
(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.
(7) An ABI provider shall have a written statement of its mission and values.
(8) An ABI provider shall have written policies and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction with direct care staff;
(c) Require prompt notification of any unusual incident;
(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;
(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and
(f) Consider the cultural, educational, language, and socioeconomic characteristics of the ABI recipient.
(9) An ABI provider shall ensure the rights of an ABI recipient by:
(a) Making available a description of the rights and the means by which the rights may be exercised, including the right:
1. To time, space, and opportunity for personal privacy;
2. To retain and use personal possessions; and
3. For a residential, personal care, companion, or respite provider to communicate, associate and meet privately with a person of the ABI recipient's choice, including:
   a. The right to send and receive unopened mail; and
   b. The right to private, accessible use of the telephone;
   c. Maintaining a grievance and appeals system; and
   d. Complying with the Americans with Disabilities Act pursuant to 28 C.F.R. Part 35.
(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service was provided and all reports shall be made available to the:
(a) Department;
(b) ABI recipient's selected case manager;
(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;
(d) General Accounting Office or its designee;
(e) Office of the Auditor of Public Accounts or its designee;
(f) Office of the Attorney General or its designee; and
(g) Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:
(a) Be recorded in permanent ink;
(b) Be free from correction fluid;
(c) Have a stike through for each entry which is initialed and dated; and
(d) Contain no blank lines between each entry.

(13) A record of each ABI recipient who is served shall:
(a) Be cumulative;
(b) Be readily available;
(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry;
(d) Contain the following specific information:
   1. The ABI recipient's name, Social Security number, and Medical Assistance Identification Number (MAID);
   2. An assessment summary relevant to the service area;
   3. The place of service, MAP-105;
   4. The crisis prevention and response plan that shall include:
      a. A list containing emergency contact telephone numbers; and
      b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;
   5. The transition plan that shall include:
      a. Skills to be developed or maintained from the ABI long term care service provider visits of an independent professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient;
   6. A list of the on-going formal and informal community services available to be accessed; and
   7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
   8. Legally adequate consent for the provision of services or other treatment including consent for emergency attention which shall be located at each service site;
   9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and
   10. Current level of care certification;
   (e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information;
   (f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and
   (g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:
(a) Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;
(b) Maintain documentation of annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:
   1. Existing staff; or
   2. A volunteer, if the volunteer performs direct care of a supervisory function;
(c) Ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;
(d) If it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up testing administered by the employee's or volunteer's physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;
(e) Not permit an individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB;
(f) Maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;
(g) Prior to the employee's date of hire or the volunteer's date of service, obtain results of:
   1. A criminal record check from the Administrative Office of the Courts; or
   2. The equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;
   (h) Obtain the result of a nurse aide abuse registry check as described in 906 KAR 1:100;
   (i) Annually, for twenty-five (25) percent of employees randomly selected, obtain:
      1. The results of a criminal record check from the Kentucky Administrative Office of the Courts; or
      2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;
   (j) Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a criminal registry check as described in 922 KAR 1:470;
   (k) Evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;
   (l) Conduct and document periodic and regularly scheduled supervisory visits of an independent professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient;
   (m) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;
   (n) Not employ an employee or volunteer to transport an ABI recipient if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;
   (o) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;
   (p) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;
   (q) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;
   (r) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;
   (s) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual is listed on a registry as a abuse or neglect victim.

(15) An ABI provider shall:
(a) Have an executive director who:
   1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and
   2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and
(b) Have adequate direct contact staff who:
   1. Is eighteen (18) years of age or older and has a high school diploma or GED; and
   2. Has a minimum of two (2) years experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(16) An ABI provider shall establish written guidelines which:
(a) Ensure the health, safety, and welfare of the ABI recipient;
(b) Prohibit firearms and ammunition at a provider service site;
(c) Address maintenance of sanitary conditions;
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(d) Ensure each site operated by the provider is equipped with:
1. Operational smoke detectors placed in strategic locations; and
2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC;
(e) Ensure the availability of a supply of hot and cold running water with the water temperature at a tap, for water used by the ABI recipient, not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;
(f) Ensure that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
(g) Ensure that staff who supervise waiver participants in medication administration;
1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and proper administration and storage of medication. The training shall be provided by a nurse, pharmacist, or medical doctor; and
2. Document on a medication log all medication administered, including:
   a. Self-administered and over-the-counter drugs; and
   b. The date, time, and initials of the person who administered the medication;
   (h) Ensure that the medication shall be:
1. Kept in a locked container;
2. Kept under double lock, if it is a controlled substance;
3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the ABI recipient or self-administered at a program site other than the recipient's residence;
4. Documented on a medication administration form; and
5. Properly disposed of if it is discontinued; and
(i) Establish policy and procedures for ongoing monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:
(a) Be readily accessible on site;
(b) Include an evacuation drill:
1. To be conducted and documented at least quarterly; and
2. For a residential setting, scheduled to include a time when an ABI recipient is asleep; and
(c) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An ABI provider shall:
(a) Provide orientation for each new employee which shall include:
1. Mission;
2. Goals;
3. Organization of the agency; and
4. Policies and procedures of the agency;
(b) Require documentation of all training provided which shall include:
1. Type of training;
2. Name and title of the trainer;
3. Length of the training;
4. Date of completion; and
5. Signature of the trainee verifying completion;
(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with an ABI recipient, which shall include:
1. Required orientation in brain injury;
2. Identifying and reporting
   a. Abuse;
   b. Neglect; and
   c. Exploitation;
3. Unless the employee is a licensed or registered nurse, first aid provided by:
   a. An individual certified as a trainer by the American Red Cross; or
   b. Other nationally accredited organization; and
4. Coronary pulmonary resuscitation provided by:
   a. An individual certified as a trainer by the American Red Cross; or
   b. Other nationally accredited organization;
(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service;
(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:
1. An occupational therapist or occupational therapy assistant providing occupational therapy;
2. A psychologist or psychologist with autonomous functioning providing psychological services;
3. A speech-language pathologist providing speech therapy;
4. A board certified behavior analyst; or
5. A physical therapist or physical therapy assistant providing physical therapy; and
(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:
1. Required orientation in brain injury as specified in paragraph (c), (2), (3), and (4) of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the ABI recipient to whom the volunteer shall provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by the provider.

(20) A case management provider shall:
(a) Establish a human rights committee which shall
1. Include an individual:
   a. With a brain injury or a family member of an individual with a brain injury;
   b. Not affiliated with the ABI provider; and
   c. Who has knowledge and experience in human rights issues;
2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; and
3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain human rights restrictions;
(b) Establish a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
2. Be separate from the human rights committee; and
3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and
(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:
1. Within thirty (30) days of the recipient's admission into the ABI program;
2. Annually thereafter; and
3. Upon discharge from the ABI Waiver program.

Section 3, ABI Recipient Eligibility, Enrollment and Termination.
(1) To be eligible to receive a service in the ABI long term care waiver program and individual shall:
(a) Be at least eighteen (18) years of age;
(b) Have an ABI which necessitates:
1. Supervision;
2. Rehabilitative services; and
3. Long term supports;
(c) Have an ABI that involves:
1. Cognition;
2. Behavior; or
3. Physical function;
(2) From inception of the ABI long term care waiver through June 30, 2009, the department shall enroll an individual on a first
priority basis, if the individual:
- (a) is currently being served in the ABI waiver as defined in 907 KAR 3:090 and has reached maximum rehabilitation potential; or
- (b) has previously received ABI waiver services as defined in 907 KAR 3:090 and is currently in a nursing facility or ICF/MR and meets the eligibility criteria established in Section 4 of this administrative regulation.

3. From inception through June 30, 2009, after all first priority basis individuals outlined in subsection (2)(a) and (b) of this Section have been enrolled, the department shall enroll the remaining ABI rehabilitation waiver waiting list individuals as described in 907 KAR 3:090, Section 7, who meet the eligibility criteria established in Section 3 of this administrative regulation.

4. After all individuals have been enrolled pursuant to subsections (2)(a), (2)(b), and (3) of this section, the department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in Section 3 of this administrative regulation.

5. If funding is not available, an individual shall be placed on the ABI long term care waiver waiting list in accordance with Section 7 of this administrative regulation.

6. A certification packet shall be submitted to the department by a case manager or support broker on behalf of the applicant that contains:
- (a) A copy of the allocation letter;
- (b) An Assessment form - MAP-351;
- (c) A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP-10, Waiver Services Physician Recommendation form;
- (d) A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;
- (e) A Plan of Care form - MAP-109; and
- (f) The ABI Recipient's Admission Discharge DCBS Notification Form - MAP-24C.

7. An individual shall receive notification of potential funding allocated for the ABI long term care waiver services for the individual in accordance with Section 7 of this administrative regulation.

8. An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.

9. An individual shall:
- (a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;
- (b) Be medically stable;
- (c) Meet Medicaid eligibility requirements established in 907 KAR 1:095;
- (d) Exhibit:
  1. Cognitive;
  2. Behavioral;
  3. Motor; or
  4. Sensory damage;
- (e) Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale, and
- (f) Receive notification of approval from the department.

10. The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:
- (a) Presenting problem;
- (b) Plan of care goal;
- (c) Expected benefit of the admission;
- (d) Expected outcome;
- (e) Service required; and
- (f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

11. An ABI long term care waiver service shall not be furnished to an individual if the individual is:
- (a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with mental retardation or a developmental disability; or
- (b) Receiving a service in another home and community based waiver program.

12. The department shall make:
- (a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and
- (b) A determination of whether to admit an individual into the ABI long term care waiver program.

13. To maintain eligibility as an ABI recipient:
- (a) An individual must maintain Medicaid eligibility requirements established in 907 KAR 1:095; and
- (b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

14. An ABI case manager or support broker shall notify the local DCBS office and the department of an ABI Recipient's Admission Discharge DCBS Notification form - MAP-24C, if the ABI recipient is:
- (a) Admitted to the ABI long term care waiver program;
- (b) Discharged from the ABI long term care waiver program;
- (c) Temporarily discharged from the ABI long term care waiver program;
- (d) Admitted to a nursing facility;
- (e) Changing the primary provider; or
- (f) Changing case management agency.

15. The department may exclude an individual from receiving an ABI long term care waiver service for which the aggregate cost of ABI waiver service is reasonably expected to exceed the cost of a nursing facility service.

16. Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:
- (a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:
  1. A statement signed by the recipient or legal representative;
  2. Copies of letters to providers; and
  3. Copies of letters from providers;
- (b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:
- a. A statement signed by the recipient or legal representative;
- b. Copies of letters to providers; and
- c. Copies of letters from providers;

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:
- a. Sixty (60) days for an individual who does not reside in a facility; or
- b. For an individual who resides in a facility, the length of the transition plan shall not exceed ninety (90) days;

3. For an ABI recipient who changes residence outside the Commonwealth of Kentucky;

4. For an ABI recipient who does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;

5. For an ABI recipient who is no longer able to be safely served in the community; or

6. For an ABI recipient who is no longer actively participating in services within the approved plan of care as determined by the Interdisciplinary Team.

17. Involuntary termination of a service to an ABI recipient by an ABI provider shall require:
- (a) Simultaneous notice, at least thirty (30) days prior to the effective date of the action, to the:  
  1. Department;
  2. ABI recipient or legal representative; and
  3. Case manager which shall include:
     a. A statement of the intended action;
     b. The basis for the intended action;
     c. The authority by which the action is taken; and
     d. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) The case manager in conjunction with the provider to:
- 1. Provide the ABI recipient with the name, address, and telephone number of each current ABI provider in the state;
2. Provide assistance to the ABI recipient in making contact with another ABI provider;
3. Arrange transportation for a requested visit to an ABI provider site;
4. Provide a copy of pertinent information to the ABI recipient or legal representative;
5. Ensure the health, safety, and welfare of the ABI recipient until an appropriate placement is secured; and
6. Provide assistance to ensure a safe and effective service transition.

(18) Voluntary termination and loss of an ABI long term care waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall be:
(a) Prior-authorized by the department; and
(b) Provided pursuant to the plan of care.

(2) An ABI waiver provider shall provide the following services to an ABI recipient:
(a) Case management services which shall:
1. Include initiation, coordination, implementation, monitoring of the assessment and reassessment, and intake and eligibility process;
2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;
3. Assist an ABI recipient and the interdisciplinary team with the development of an individualized plan of care and with updating the plan of care as necessary based on changes in the recipient's medical condition and supports;
4. Include monitoring of the delivery of services and the effectiveness of the plan of care, which shall:
(a) Be initially developed with the ABI recipient and legal representative, if appointed prior to the level of care determination;
(b) Be updated within the first thirty (30) days of service and as changes or recertification occurs; and
(c) Include sending the ABI Plan of Care form - MAP-109 to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;
5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs and the thirty (30) days prior to discharge and shall include:
(a) The skills or services to be obtained from the ABI long term care waiver program upon transition into the community; and
(b) A listing of the community supports available upon the transition;
6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI long term care waiver;
7. Be provided by a case manager who:
(a) Is a registered nurse;
(b) Is a licensed practical nurse;
c. Has a bachelor's or master's degree in a human services field and meets all applicable requirements of the individual's particular field, including a degree in:
(i) Psychology;
(ii) Sociology;
(iii) Social work;
(iv) Rehabilitation counseling; or
(v) Occupational therapy;
d. Is an independent case manager;
e. Is employed by a free-standing case management agency;
f. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
g. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;
h. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

(i) Shall, within the first thirty (30) days of the service and as information is updated, provide to the chosen ABI service provider a distribution of the:
(i) Crisis prevention and response plan;
(ii) Transition plan,
(iii) Plan of care; and
(iv) Other pertinent documents;
(j) Shall provide twenty-four (24) hour telephone access to the ABI recipient and chosen ABI provider;
k. Shall work in conjunction with an ABI provider selected by the ABI recipient to develop a crisis prevention and response plan which shall be:
(i) Individual-specific; and
(ii) Updated as a change occurs and at each recertification;
l. Shall assist an ABI recipient in planning resource use and assuming protection of resources;
m. Shall conduct one (1) face-to-face meeting with an ABI recipient within a calendar month occurring at a covered service site, with one (1) visit quarterly occurring at the ABI recipient's residence;
n. Shall ensure twenty-four (24) hour availability of services; and
(o) Shall ensure that the ABI recipient's health, welfare, and safety needs are met;
8. Be documented by a detailed staff note which shall include:
(a) A monthly summary including documentation of:
(i) Monthly contact with each chosen ABI provider;
(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care; and
(l) Effectiveness of the plan of care:
b. The ABI recipient's health, safety, and welfare;
c. Progress toward outcomes identified in the approved plan of care;
d. The date of the service;
e. Beginning and ending time; and
f. The signature and title of the individual providing the service;
(b) Behavioral services which shall:
1. Be a systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Include a functional analysis of the ABI recipient's behavior including:
(a) An evaluation of the impact of an ABI on:
(i) Cognition; and
(b) Behavior;
(c) An analysis of potential communicative intent of the behavior;
(d) The history of reinforcement for the behavior;
(e) Critical variables that precede the behavior;
(f) Effects of different situations on the behavior; and
(f) A hypothesis regarding the:
(i) Motivation;
(ii) Purpose; and
(w) Factors which maintain the behavior;
3. Include the development of a behavioral support plan which shall:
(a) Be developed by the behavioral specialist;
b. Not be implemented by the behavior specialist who wrote the plan;
c. Be revised as necessary;
d. Define the techniques and procedures used;
e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
f. Reflect the use of positive approaches; and
(g) Prohibit the use of:
(i) Physical or punitive restraint;
(ii) Corporal punishment;
(iii) Segregation;
(iv) Verbal abuse; and
(v) Any procedure which denies private communication, requires sleep, shelter, bedding, food, drink, or use of a bathroom facility;
4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;
5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:
   a. The analysis of data concerning the:
      (i) Frequency;
      (ii) Intensity; and
      (iii) Duration of a behavior;
   b. Reports involved in implementing the behavioral service plan; and
   c. A monthly summary that assesses the participant's status related to the approved plan of care;
6. Be provided by a behavior specialist who shall be:
   a. A psychologist;
   b. A psychologist with autonomous functioning;
   c. A licensed psychological associate;
   d. A psychiatrist;
   e. A licensed clinical social worker;
   f. A clinical nurse specialist with a master's degree in:
      (i) Psychiatric nursing; or
      (ii) Rehabilitation nursing;
   g. An advanced registered nurse practitioner (ARNP);
   h. A board certified behavior analyst; or
   i. A licensed professional clinical counselor; and
7. Be documented by a detailed staff note which shall include:
   a. The date of the service;
   b. The beginning and ending time;
   c. The signature and title of the behavioral specialist; and
   d. A summary of data analysis and progress of the individual toward meeting goals of the service;
(c) Community living supports shall:
   1. Be in provided in accordance with the recipient's plan of care, including:
      a. A nonmedical service;
      b. Supervision; or
      c. Socialization;
   2. Include assistance, prompting, observing, or training in activities of daily living;
   3. Include activities of daily living which shall include:
      a. Bathing;
      b. Eating;
      c. Dressing;
      d. Personal hygiene;
      e. Shopping; and
   f. Money management,
4. Include prompting, observing, and monitoring of medications and nonmedical care not requiring a nurse or physician intervention;
5. Include socialization, relationship building, and participation in community activities according to the approved plan of care which are therapeutic and not diversional in nature,
6. Accompany and assist an ABI recipient while utilizing transportation services;
7. Include documentation in a detailed staff note which shall include the:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. Date of the service;
   c. Beginning and ending time; and
   d. Signature and title of the individual providing the service;
8. Not be provided to an ABI recipient who receives community residential services; and
9. Be provided by:
   a. Home health agency licensed and operating in accordance with 902 KAR 20:081;
   b. Community mental health center licensed and operating in accordance with 902 KAR 20:091;
   c. Community habilitation program certified at least annually by the department; or
   d. Supervised Residential Care setting certified at least annually by the department;
   (d) Supervised residential care which shall be provided by:
      1. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or
2. An approved waiver provider certified at least annually by the department;
   (e) Supervised residential care which shall include the following levels of supervision:
      1. Supervised residential care level I which shall:
         a. Not have greater than three (3) ABI recipients residing in a home rented or owned by the ABI provider;
         b. Shali provide twenty-four (24) hour supervision;
         c. Be based on the individual needs of a recipient;
         d. May include the provision of trial periods of up to five (5) unsupervised hours per day for a member to work toward increased independence. If this option is utilized, an ABI provider shall develop an individualized plan for the recipient to work toward achieving increased independence, which shall include:
            (i) Necessary provisions to assure the recipient's health, safety, and welfare;
            (ii) Documented approval by the recipient's treatment team; and
      (ii) Periodic review and updates based on changes in the recipient's status;
   e. Shall provide assistance and training with daily living skills including the following activities:
      (i) Ambulating;
      (ii) Dressing;
      (iii) Grooming;
      (iv) Eating;
      (v) Toileting;
      (vi) Bathing;
      (vii) Meal planning;
      (viii) Grocery shopping and meal preparation;
      (ix) Laundry;
      (x) Budgeting and financial matters;
      (xi) Home care and cleaning;
      (xii) Instruction in leisure skills, or
      (xiii) Instruction in self medication; or
      (xiv) Social skills training, including the reduction or elimination of maladaptive behaviors in accordance with the plan of care;
   f. Shall provide or arrange transportation to services, activities, and medical appointments as needed;
   g. Shall accompany and assist an ABI recipient while utilizing transportation services as specified in the plan of care;
   h. Shall include participation in medical appointments and follow-up care as directed by the medical staff; and
   i. Shall be documented by a detailed staff note which shall include:
      (i) Progress toward goals and objectives identified in the approved plan of care;
      (ii) The date of the service;
      (iii) Beginning and ending time; and
      (iv) The signature and title of the individual providing the service;
2. Supervised residential care level II which shall:
   a. Not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider;
   b. Provide twelve (12) to eighteen (18) hours of supervision per day;
   c. Be based on the individual needs of a recipient;
   d. Require documented approval by the recipient's treatment team;
   e. Require periodic review and updates based on changes in the recipient's status;
   f. Provide assistance and training with daily living skills which shall include the following activities:
      (i) Ambulating;
      (ii) Dressing;
      (iii) Grooming;
      (iv) Eating;
      (v) Toileting;
      (vi) Bathing;
      (vii) Meal planning;
      (viii) Grocery shopping and meal preparation;
      (ix) Laundry;
      (x) Budgeting and financial matters;
      (xi) Home care and cleaning;
(xii) Instruction in leisure skills;
(xiii) Instruction in self medication; or
(xiv) Social skills training, including the reduction or elimination of maladaptive behaviors in accordance with the plan of care;
(g) Provide or arrange transportation to services, activities, and medical appointments as needed;
h. Accompany and assist an ABI recipient while utilizing transportation services as specified in the plan of care;
i. Include participation in medical appointments and follow-up care as directed by the medical staff;
j. Provide twenty-four (24) hour on-call support; and
k. Be documented by a detailed staff note which shall include:
(i) Progress toward goals and objectives identified in the approved plan of care;
(ii) The date of the service;
(iii) Beginning and ending time; and
(iv) The signature and title of the individual providing the service;
3. Supervised residential care level III which shall:
a. Be provided to an ABI participant who lives alone or with an unrelated roommate in a:
   (i) Single family home;
   (ii) Duplex; or
   (iii) Apartment building;
   b. Be provided to no more than two (2) waiver participants in one (1) home or apartment. This service shall be provided in no more than two (2) apartments per building, supported by staff who are available twenty-four (24) hours a day, seven (7) days a week, but who do not live in any of the units occupied by individuals receiving supports;
c. Provide less than twelve (12) hours of supervision or support in the home;
d. Require documented approval by the recipient's treatment team; and
(e) Require periodic review and updates based on changes in the recipient's status.
f. Provide assistance and training in daily living skills which shall include:
   (i) Ambulating;
   (ii) Dressing;
   (iii) Grooming;
   (iv) Eating;
   (v) Toileting;
   (vi) Bathing;
   (vii) Meal planning;
   (viii) Shopping and meal preparation;
   (ix) Laundry;
   (x) Budgeting and financial matters;
   (xi) Home care and cleaning;
   (xii) Instruction in leisure skills;
   (xiii) Instruction in self medication; or
   (xiv) Social skills training, including the reduction or elimination of maladaptive behaviors in accordance with the plan of care;
g. Provide or arrange transportation to services, activities, and medical appointments as needed;
h. Accompany and assist an ABI recipient while utilizing transportation services;
i. Include participation in medical appointments and follow-up care as directed by the medical staff; and
j. Be documented by a detailed staff note which shall include:
   (i) Progress toward goals and objectives identified in the approved plan of care;
   (ii) The date of the service;
   (iii) Beginning and ending time; and
   (iv) The signature and title of the individual providing the service; and
   (v) Evidence of one (1) daily face-to-face contact with the ABI recipient;
(f) Supervised residential care levels I, II, and III shall:
1. Not include the cost of room and board;
2. Be available to an ABI recipient who:
   a. Does not reside with a caregiver;
   b. Resides with a caregiver but demonstrates maladaptive behavior that places the ABI recipient at significant risk for injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents and it results in the need for the ABI recipient to be removed from the home to be in a more structured setting; or
   c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
2. Utilize a modular home only if the:
   a. Wheels are removed;
   b. Home is anchored to a permanent foundation; and
   c. Windows are of adequate size for an adult to use as an exist in an emergency;
3. Not utilize a motor home;
5. Provide a sleeping room which ensures that an ABI recipient:
   a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;
   b. Does not share a room with an individual who presents a potential threat; and
   c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and
6. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care;
7. Have applications reviewed monthly by a residential review committee, as required by the department, to consider applications for supervised residential care. The application shall be:
   a. Considered in the order in which it was received by the department;
   b. Received by the department no later than the close of business the day before the committee convenes in order to be considered at the monthly committee meeting; and
   c. Considered by the committee at the committee's decision based upon the following criteria:
      (i) The applicant does not reside with a caregiver;
      (ii) The applicant resides with a caregiver but demonstrates maladaptive behavior that places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
      (iii) The applicant demonstrates behavior that may result in potential legal problems if not ameliorated;
8. Have applications reviewed by a residential review committee which is comprised of three (3) program staff of the Cabinet;
   a. Each member shall have professional or personal experience with brain injury or other cognitive disabilities; and
   b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch;
   (c) Counseling services which:
      1. Shall be designed to help an ABI long term care waiver recipient resolve personal issues or interpersonal problems resulting from the recipient's ABI;
      2. Shall assist a family member in implementing an ABI long term care waiver recipient's approved plan of care;
      3. In a severe case, shall be provided as an adjunct to behavioral programming;
      4. Shall include substance abuse or chemical dependency treatment;
      5. Shall include building and maintaining healthy relationships;
      6. Shall develop social skills or the skills to cope with and adjust to the brain injury;
      7. Shall increase knowledge and awareness of the effects of an ABI;
     8. May include group counseling if the service is:
        a. Provided to a maximum of twelve (12) ABI recipients; and
        b. Included in the recipient's approved plan of care; for
        (i) Substance abuse or chemical dependency treatment;
        (ii) Building and maintaining healthy relationships;
        (iii) Developing social skills;
        (iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and
        (v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social
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interactions;
9. Shall be provided by:
   a. A psychiatrist;
   b. A psychologist;
   c. A psychologist with autonomous functioning;
   d. A licensed psychological associate;
   e. A licensed clinical social worker;
   f. A clinical nurse specialist with a master's degree in psychiatric nursing;
   g. An advanced registered nurse practitioner (ARNP);
   h. A certified alcohol and drug counselor;
   i. A licensed marriage and family therapist, or
   j. A licensed professional clinical counselor, and
   10. Shall be documented by a detailed staff note which shall include:
   a. Progress toward the goals and objectives established in the plan of care;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (h) Family training which shall:
   1. Provide training and counseling services for the families of individuals served in the ABI long term care waiver. Training to family or other responsible persons shall include:
      a. Interpretation or explanation of medical examinations and procedures;
      b. Treatment regimens;
      c. Use of equipment specified in the plan of care; or
      d. Advising how to assist the participant;
   2. Include updates as needed to safely maintain the participant at home;
   3. Include specified goals in the ABI recipient's plan of care;
   4. Be training provided to family that may include:
      a. A person who lives with;
      b. A person who provides care to an ABI long term care waiver recipient and may include a:
         (i) Parent;
         (ii) Spouse;
         (iii) Child;
         (iv) Relative;
         (v) Foster family, or
         (vi) In-law; and
   5. Not include an individual who is employed to care for the consumer;
   6. Be provided by an approved ABI waiver provider that is certified at least annually which may include:
      a. An occupational therapist;
      b. A certified occupational therapy assistant;
      c. A licensed practical nurse;
      d. A physical therapist;
      e. A physical therapy assistant;
      f. A licensed nurse;
      g. A speech-language pathologist;
      h. A psychologist;
      i. A psychiatrist;
      j. A psychologist with autonomous functioning;
      k. A licensed psychological associate;
      l. A clinical nurse specialist with a master's degree in:
         (i) Psychiatric nursing; or
         (ii) Rehabilitation nursing;
      m. An advanced registered nurse practitioner (ARNP);
      n. A certified alcohol and drug counselor;
      o. A licensed professional clinical counselor;
      p. A board certified behavior analyst;
      q. A licensed clinical social worker; or
      r. A licensed marriage and family therapist; and
   7. Be documented by a detailed staff note which shall include:
      a. Progress toward the goals and objectives established in the plan of care;
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
      (i) Nursing supports which shall include:
         1.a. A physician order to monitor medical conditions; or
         b. A physician order for training and oversight of medical procedures;
      2. The monitoring of specific medical conditions;
      3. Services that shall be provided by:
         a. A registered nurse who meets the definition established in KRS 310.011(5); or
         b. A licensed practical nurse as defined by KRS 314.011(9) who works under the supervision of a registered nurse; and
      4. Documentation by a detailed staff note which shall include:
         a. Progress toward the goals and objectives established in the plan of care;
         b. The date of the service;
         c. The beginning and ending time; and
         d. The signature and title of the individual providing the service;
         (i) Occupational therapy which shall be:
            1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;
            2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;
            3. Exclusive of maintenance or the prevention of regression;
            4. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational therapist in accordance with 201 KAR 28:130; and
      5. Documented by a detailed staff note which shall include:
         a. Progress toward goals and objectives identified in the approved plan of care;
         b. The date of the service;
         c. Beginning and ending time; and
         d. The signature and title of the individual providing the service;
         (k) A physical therapy service which shall be:
            1. A physician-ordered evaluation of an ABI recipient by applying muscle, joint, and functional ability tests;
            2. Physician-ordered treatment in a specified amount and duration to assist an ABI recipient in obtaining the highest possible level of functioning;
            3. Training of another ABI provider to improve the level of functioning of the recipient in that provider's service setting;
            4. Exclusive of maintenance or the prevention of regression;
            5. Provided by a physical therapist or a physical therapy assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22.020; and
      6. Documented by a detailed staff note which shall include:
         a. Progress made toward outcomes identified in the plan of care;
         b. The date of the service;
         c. Beginning and ending time of the service; and
         d. The signature and title of the individual providing the service;
         (l) A respite service which shall:
            1. Be provided only to an ABI long term care waiver recipient unable to administer self-care;
            2. Be provided by a:
               a. Nursing facility;
               b. Community mental health center;
               c. Home health agency;
               d. Supervised residential care provider;
               e. Adult day training provider; or
               f. Adult day health care provider;
            3. Be provided on a short-term basis due to:
               a. Absence; or
               b. Need for relief of an individual providing care to an ABI long term care waiver recipient;
            4. Be limited to 5,760 fifteen (15) minute units per calendar year unless an individual's usual caregiver is unable to provide care due to a:
               a. Death in the family;
               b. Serious illness; or
               c. Hospitalization;
            5. Not be provided to an ABI long term care waiver recipient who receives supervised residential care;
            6. Not include the cost of room and board if provided in a nursing facility; and
            7. Be documented by a detailed staff note which shall include:
a. Progress toward goals and objectives identified in the approved plan of care;  
  b. The date of the service;  
  c. The beginning and ending time; and  
  d. The signature and title of the individual providing the service;  
  (m) Speech therapy services which shall be:  
  1. A physician-ordered evaluation of an ABI recipient with a speech, hearing, or language disorder;  
  2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;  
  3. Exclusive of maintenance or the prevention of regression;  
  4. Provided by a speech language pathologist; and  
  5. Documented by a detailed staff note which shall include:  
  a. Progress toward goals and objectives identified in the approved plan of care;  
  b. The date of the service;  
  c. The beginning and ending time; and  
  d. The signature and title of the individual providing the service;  
  (n) Adult day training services which shall:  
  1. Be provided by:  
  a. An adult day training center which is certified at least annually by the department;  
  b. An outpatient rehabilitation facility which is licensed and operating in accordance with 902 KAR 20.190; or  
  c. A community mental health center licensed and operating in accordance with 902 KAR 20.091;  
  2. Focus on enabling the individual to attain or maintain the individual’s maximum functional level and reintegrate the individual into the community;  
  3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person unless an ABI recipient requires individualized special service;  
  4. Include the following services:  
  a. Social skills training related to problematic behaviors identified in the recipient’s plan of care;  
  b. Sensory or motor development;  
  c. Reduction or elimination of a maladaptive behavior;  
  d. Provocational; or  
  e. Teaching concepts and skills to promote independence including:  
  (i) Following Instructions;  
  (ii) Attendance and punctuality;  
  (iii) Task completion;  
  (iv) Budgeting and money management;  
  (v) Problem solving; or  
  (vi) Safety;  
  5. Be provided in a nonresidential setting;  
  6. Be developed in accordance with an ABI waiver service recipient’s overall approved plan of care;  
  7. Reflect the recommendations of an ABI waiver service recipient’s interdisciplinary team;  
  8. Be appropriate;  
  a. Given an ABI waiver service recipient’s:  
  (i) Age;  
  (ii) Level of cognitive and behavioral function; and  
  (iii) Interest;  
  b. Given an ABI waiver service recipient’s ability prior to and after the recipient’s injury; and  
  c. According to the approved plan of care and be therapeutic in nature and not diversional;  
  9. Be coordinated with:  
  a. Occupational;  
  b. Speech, or  
  c. Other rehabilitation therapy included in an ABI long term care waiver recipient’s plan of care;  
  10. Provide an ABI long term care waiver recipient with an organized framework within which to function in the recipient’s daily activities;  
  11. Entail frequent assessments of an ABI long term care waiver recipient’s progress and be appropriately revised as necessary; and  
  12. Be documented by a detailed staff note which shall include:  
  a. Progress toward goals and objectives identified in the approved plan of care;  
  b. The date of the service;  
  c. The beginning and ending time; and  
  d. The signature and title of the individual providing the service; and  
  e. A monthly summary that assesses the participant’s status related to the approved plan of care;  
  (o) Adult day health care services which shall:  
  1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20.066; and  
  2. Include the following basic services and necessities provided to a Medicaid ABI long term care waiver recipient during the posted hours of operation:  
  a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:  
  (i) Ostomy care;  
  (ii) Urinary catheter care;  
  (iii) Decubitus care;  
  (iv) Tube feeding;  
  (v) Venipuncture;  
  (vi) Insulin injections;  
  (vii) Tracheotomy care; or  
  (viii) Medical monitoring;  
  b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;  
  c. Snacks;  
  d. Supervision by a registered nurse;  
  e. Daily activities that are appropriate, given an ABI long term care waiver recipient’s:  
  (i) Age;  
  (ii) Level of cognitive and behavioral function, (iii) Interest; and  
  f. Routine services that meet the daily personal and health care needs of an ABI long term care waiver recipient, including:  
  (i) Monitoring of vital signs;  
  (ii) Assistance with activities of daily living; and  
  (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by an ABI long term care waiver recipient;  
  3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;  
  4. Focus on enabling the individual to attain or maintain the individual’s maximum functional level and reintegrate an individual into the community by providing the following training:  
  a. Social skills training related to problematic behaviors identified in the ABI long term care waiver recipient’s plan of care;  
  b. Sensory or motor development;  
  c. Reduction or elimination of a maladaptive behavior per the ABI long term care waiver recipient’s plan of care;  
  d. Provocational; or  
  e. Teaching concepts and skills to promote independence including:  
  (i) Following Instructions;  
  (ii) Attendance and punctuality;  
  (iii) Task completion;  
  (iv) Budgeting and money management;  
  (v) Problem solving; or  
  (vi) Safety;  
  5. Be provided in a nonresidential setting;  
  6. Be developed in accordance with an ABI long term care waiver recipient’s overall approved plan of care;  
  7. Reflect the recommendations of an ABI long term care waiver recipient’s interdisciplinary team;  
  8. Be appropriate;  
  a. Given an ABI long term care waiver recipient’s:  
  (i) Age;  
  (ii) Level of cognitive and behavioral function; and  
  (iii) Interest;  
  b. Given an ABI long term care waiver recipient’s ability prior to and after the recipient’s injury; and  
  c. According to the approved plan of care and be therapeutic in nature and not diversional;  
  9. Be coordinated with:  
  a. Occupational;  
  b. Speech, or  
  c. Other rehabilitation therapy included in an ABI long term care waiver recipient’s plan of care;  
  10. Provide an ABI long term care waiver recipient with an organized framework within which to function in the recipient’s daily activities;  
  11. Entail frequent assessments of an ABI long term care waiver recipient’s progress and be appropriately revised as necessary; and  
  12. Be documented by a detailed staff note which shall include:
b. Be reasonable and necessary for the ABI long term care waiver recipient's condition;

c. Be rehabilitative in nature;

d. Include:
   (i) Physical therapy provided by a physical therapist or physical therapist assistant;
   (ii) Occupational therapy provided by an occupational therapist or occupational therapist assistant; or
   (iii) Speech therapy provided by a speech-language pathologist; and
   a. Comply with the: (i) Physical;
      (ii) Occupational; and
      (iii) Speech therapy requirements established in Technical Criteria for Reviewing Ancillary Services for Adults in accordance with 807 KAR 1:030, Section 3 and 6.

9. Be provided to an ABI long term care waiver recipient by the health team in an adult day health care center which may include:
   a. A physician;
   b. A physician assistant;
   c. An advanced registered nurse practitioner (ARNP);
   d. A registered nurse;
   e. A licensed practical nurse;
   f. An activities director;
   g. A physical therapist;
   h. A physical therapist assistant;
   i. An occupational therapist;
   j. An occupational therapist assistant;
   k. A speech pathologist;
   l. A social worker;
   m. A nutritionist;
   n. A health aide;
   o. An LPCC
   p. A licensed marriage and family therapist;
   q. A certified psychologist with autonomous functioning; or
   r. A licensed psychological associate.

10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20 066 and from information in the Map-351 and revised as needed;

   11. Be documented by a detailed staff note which shall include:
      a. Progress toward goals and objectives identified in the approved plan of care;
      b. The date of the service;
      c. The beginning and ending time;
      d. The signature and title of the individual providing the service;
      e. A monthly summary that assesses the participant's status related to the approved plan of care;

   (p) Supported employment which shall be:
      1. Intensive, ongoing services for an ABI long term care waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;
      2. Provided by:
         a. Supported employment provider;
         b. Sheltered employment provider; or
         c. Structured day program provider;
      3. Provided one-on-one;
      4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI long term care waiver recipient's file;
      5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;
      6. An activity needed to sustain paid work by an ABI long term care waiver recipient receiving waiver services, including:
         a. Supervision; and
         b. Training;
      7. Exclusive of work performed directly for the supported employment provider; and
      8. Documented by a time and attendance record which shall include:
         a. Progress toward the goals and objectives identified in the plan of care;
         b. The date of service;
         c. The beginning and ending time; and
         d. The signature and title of the individual providing the service;

(n) Specialized medical equipment and supplies which shall:
      1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
      2. Enable an ABI recipient to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
      3. Be ordered by a physician and submitted on a Request for Equipment form-MAP - 95 and include three (3) estimates for vision and hearing;
      4. Include equipment necessary to the proper functioning of specialized items;
      5. Not be available through the department's durable medical equipment, vision, or hearing program;
      6. Not be necessary for life support;
      7. Meet applicable standards of manufacture, design, and installation; and
      8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient;

(t) Environmental and minor home adaptations which shall:
      1. Be provided in accordance with applicable state and local building codes;
      2. Be provided to an ABI recipient if:
         a. Ordered by a physician;
         b. Prior authorized by the ABIB;
      3. Submitted on a request for Equipment form - MAP-95 by a case manager or support broker;
      4. Specified in an ABI long term care waiver recipient's approved plan of care;
      5. Necessary to enable an ABI recipient to function with greater independence within the recipient's home; and
      6. Without the modification, the ABI recipient requires institutionalization;
      7. Not include a vehicle modification;
      8. Be limited to no more than $2,000 for an ABI recipient in a twelve (12) month period; and
      9. If entailing:
         a. Electrical work, be provided by a licensed electrician; or
         b. Plumbing work, be provided by a licensed plumber;

(s) Assessment services which shall:
      1. Be a comprehensive assessment which shall identify an ABI long term care waiver recipient's needs and the services that the recipient's family cannot manage or arrange for the recipient;
      2. Evaluate an ABI long term care waiver recipient's physical health, mental health, social supports, and environment;
      3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;
      4. Be conducted by an ABI case manager or support broker;
      5. Be conducted within seven (7) calendar days of receipt of the request for assessment;
      6. Include at least one (1) face-to-face contact with the ABI long term care waiver recipient and, if appropriate, the recipient's family by the assessor in the ABI long term care waiver recipient's home; and
      7. Not be reimbursable if the individual does not receive a level of care certification and

(t) Reassessment service which shall:
      1. Be performed at least every twelve (12) months;
      2. Be conducted using the same procedures as for an assessment service;
      3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
      4. Not be reimbursable if conducted during a period that the ABI long term care waiver recipient is not covered by a valid level of care certification; and
      5. Not be retroactive.

Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

1. A stroke treatable in a nursing facility providing routine
rehabilitation services;
(2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including:
(a) Senile dementia;
(b) Organic brain disorder;
(c) Alzheimer's disease;
(d) Alcoholism; or
(e) Another addiction;
(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
(5) A birth defect;
(6) Mental retardation without an etiology to an acquired brain injury; or
(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community.

Section 6. Incident Reporting Process. (1) An Incident shall be documented on an Incident report form.
(2) There shall be three (3) types of incidents as follows:
(a) A Class I incident which shall:
1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider agency;
3. Be reported within twenty-four (24) hours to the:
   a. Case manager; or
   b. Support broker;
4. Be reported to the guardian as directed by the guardian; and
5. Be retained on file at the:
   a. Provider and case management agency; or
   b. Support brokerage agency;
(b) A Class II incident which shall:
1. a. Be serious in nature;
   b. Include a medication error; or
   c. Involve the use of a.
   (i) Physical, or
   (ii) Chemical restraint;
2. Require an investigation which shall:
   a. Be initiated by the provider agency within twenty-four (24) hours of discovery; and
   b. Shall involve the case manager or support broker;
3. Be reported to the following by the provider agency:
   a. The case manager or support broker within twenty-four (24) hours of discovery;
   b. The guardian within twenty-four (24) hours of discovery; and
   c. ABI within twenty-four (24) hours of discovery followed by:
       (i) A complete written report of the incident investigation; and
       (ii) Follow-up within ten (10) calendar days of discovery;
   a. A Class III incident which shall:
      1. a. Be grave in nature;
      b. Involve suspected:
         (i) Abuse;
         (ii) Neglect; or
         (iii) Exploitation;
      c. Involve a medication error which requires a medical intervention; or
      d. Be a death;
2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and
3. Be reported by the provider agency to:
   a. The case manager or support broker within eight (8) hours of discovery;
   b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;
   c. The guardian within eight (8) hours of discovery; and
   d. ABI within eight (8) hours of discovery followed by:
       (i) A complete written report of the incident investigation; and
       (ii) Follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to ABI shall occur on the following business day.
(3) The following documentation with a complete written report shall be submitted for a death:
(a) A current plan of care;
(b) A current list of prescribed medications including PRN medications;
(c) A current crisis plan;
(d) Medication Administration Review (MAR) forms for the current and previous month;
(e) Staff notes from the current and previous month including details of physician and emergency room visits;
(f) Any additional information requested by the department;
(g) A coroner's report; and
(h) If performed, an autopsy report.

Section 7. ABI Long Term Waiving List. (1) An individual eighteen (18) years of age or older applying for an ABI long term care waiver service shall be placed on a statewide ABI long term care waiver waiting list which shall be maintained by the department.
(2) In order to be placed on the ABI long term care waiver waiting list, an individual shall submit to the department:
(a) Completed Acquired Brain Injury Waiver Services Program Application form MAP-26, and
(b) Waiver Services-Physician Recommendation form - MAP-10.
(3) The order of placement on the ABI long term care waiver waiting list shall be determined by:
(a) Chronological date of receipt of the Waiver Services-Physician Recommendation form - MAP-10;
(b) Category of need of the individual as follows:
   1. Emergency. An immediate service is indicated as determined by:
      a. The individual currently is demonstrating behavior related to the individual's acquired brain injury that places the recipient, caregiver, or others at risk of significant harm;
      b. The individual is demonstrating behavior related to the individual's acquired brain injury which has resulted in the individual's arrest, or
   2. Nonemergency; and
(c) The Emergency Committee which shall consider applications for the Acquired Brain Injury long term care waiver program for emergency placement. The Emergency Committee meetings shall regularly occur during the fourth week of each month. To be considered at the monthly committee meeting, an application shall be received by the department no later than three (3) business days before the scheduled committee meeting.
1. The Emergency Review Committee shall be comprised of three (3) program staff of the Cabinet;
   a. Each member shall have professional or personal experience with brain injuries or other cognitive disabilities, and
   b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch.
(4) In determining chronological status, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Waiver Services-Physician Recommendation form - MAP-10 shall be maintained and not changed if an individual is moved from one (1) category of need to another.
(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to an individual or caregiver, or the nature of the individual's medical need.
(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.
(7) If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.
(8) A written notification of placement on the waiting list shall be mailed to the individual or the individual's legal representative and case management provider if identified.
(9) Maintenance of the ABI long term care waiver waiting list shall occur as follows:
(a) The department shall, at a minimum, update the waiting list annually;
(b) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the de-
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1. Individual;
2. Individual’s legal representative; and
3. ABI case manager;
(10) Reassignment of category of need shall be completed based on the updated information and validation process.
(11) An individual or legal representative may submit a request for consideration of movement from one (1) category of need to another at any time an individual’s status changes.
(12) An individual shall be removed from the ABI long term care waiver waiting list if:
(a) After a documented attempt, the department is unable to locate the individual or the individual’s legal representative;
(b) The individual is deceased; or
(c) The Individual or individual’s legal representative refuses the offer of ABI long term care waiver services and does not request to be maintained on the ABI long term care waiver waiting list.
(13) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:
(a) Individual or to the individual’s legal representative; and
(b) ABI case manager.
(14) The removal of an individual from the ABI long term care waiver waiting list shall not prevent the submittal of a new application at a later date.
(15) Potential funding allocated for services for an individual shall be based upon:
(a) The individual’s category of need; and
(b) The individual’s chronological date of placement on the ABI long term care waiver waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI long term care waiver recipient participating in CDO shall include:
(a) A home and community support service which shall:
1. Be available only under the consumer directed option;
2. Be provided in the consumer’s home or in the community;
3. Be based upon therapeutic goals and not be diversional in nature;
4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-CDO acquired brain injury service; and
5. Be respite for the primary caregiver; or
b. Socialization; and
c. Leisure or retirement activities;
4. Be based upon therapeutic goals and not be diversional in nature; and
5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-CDO acquired brain injury service.
(2) To be covered, a CDO service shall be specified in a consumer’s plan of care.
(3) Reimbursement for a CDO service shall not exceed the department’s allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.
(4) A consumer, including a married consumer, shall choose a provider and the choice of CDO provider shall be documented in the consumer’s plan of care.
(5) A consumer may designate a representative to act on the consumer’s behalf. The CDO representative shall:
(a) Be twenty-one (21) years of age or older;
(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
(c) Be appointed by the consumer on a MAP-2000 form.
(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.
(7) The department shall immediately terminate a consumer from CDO services if:
(a) Imminent danger to the consumer’s health, safety, or welfare exists;
(b) The consumer fails to pay patent liability;
(c) The consumer’s plan of care indicates the consumer requires more hours of service than the program can provide, jeopardizing the consumer’s safety and welfare due to being left alone without a caregiver present; or
(d) The consumer, caregiver, family, or guardian threaten or intends to support broker or other CDO staff.
(8) The department may terminate a consumer from CDO services if the department determines that the consumer’s CDO provider has not adhered to the plan of care.
(9) Except as provided in subsection (7) of this section, prior to a consumer’s termination from CDO services, the support broker shall:
(a) Notify the assessment or reassessment service provider of potential termination; and
(b) Assist the consumer in developing a resolution and prevention plan.
(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;
(d) Complete a new consumer contact form in the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
(e) Assist the consumer in transitioning back to traditional ABI services.
(10) Upon an involuntary termination of CDO services, the department shall:
(a) Notify the consumer in writing of its decision to terminate the consumer’s CDO participation; and
(b) Except in a case where a consumer failed to pay patent liability, inform the consumer of the right to appeal the department’s decision in accordance with Section 10 of this administrative regulation.
(11) A CDO provider shall:
(a) Be selected by the consumer;
(b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
(c) Be eighteen (18) years of age or older;
(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
(e) Be able to communicate effectively with the consumer, consumer representative, or family;
(f) Be able to understand and carry out instructions;
(g) Be able to keep records as required by the consumer;
(h) Submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided
or worked outside Kentucky during the year prior to selection as a
provider of CDO services;
(i) Submit to a check of the central registry maintained in ac-


or worked outside Kentucky during the year prior to selection as a
provider of CDO services;
(i) Submit to a check of the central registry maintained in ac-
cordance with 922 KAR 1:470 and not be found on the registry;
1. A consumer may employ a provider prior to a central registry
check result being obtained for up to thirty (30) days; and
2. If a provider does not obtain a central registry check result
within thirty (30) days of employing a provider, the consumer shall
cease employment of the provider until a favorable result is
obtained;
(j) Submit to a check of the nurse aide abuse registry main-
tained in accordance with 906 KAR 1:100 and not be found on the reg-
istry;
(k) Not have pled guilty or been convicted of committing a sex
crime or violent crime as defined in KRS 17.165(1) through (3);
(l) Complete training on the reporting of abuse, neglect, or
exploitation in accordance with KRS 209.030 or 620.030 and on
the needs of the consumer;
(m) Be approved by the department;
(n) Maintain and submit timesheets documenting hours
worked; and
(o) Be a friend, spouse, parent, family member, other relative,
employee of a provider agency, or other person hired by the con-
sumer.
12. A parent, parents combined, or a spouse shall not provide
more than forty (40) hours of services in a calendar week (Sunday
through Saturday) regardless of the number of family members
who receive waiver services.
13.(a) The department shall establish a budget for a con-
sumer based on the individual's historical costs minus five (5) per-
cent to cover costs associated with administering the consumer directed
option. If no historical cost exists for the consumer, the consumer's
budget shall equal the average per capita historical costs of ABI
long term care waiver recipients minus five (5) percent.
(b) Cost of services authorized by the department for the indi-
vidual's prior year plan of care but not utilized may be added to the
budget if necessary to meet the individual's needs.
(c) The department may adjust a consumer's budget based on
the consumer's needs and in accordance with paragraphs (d) and
(e) of this subsection.
(d) A consumer's budget shall not be adjusted to a level higher
than established in paragraph (a) of this subsection unless:
1. The consumer's support broker requests an adjustment to a
level higher than established in paragraph (a) of this subsection; and
2. The department approves the adjustment.
(e) The department shall consider the following factors in de-
termining whether to allow for a budget adjustment:
1. If the proposed services are necessary to prevent imminent
institutionalization;
2. The cost effectiveness of the proposed services; and
3. Protection of the consumer's health, safety, and welfare.
4. A significant change has occurred in the recipient's:
   a. Physical condition resulting in additional loss of function or
      limitations to activities of daily living and instrumental activities
      of daily living;
   b. Natural support system; or
   c. Environmental/ living arrangement resulting in the recipient's
      relocation.
(f) A consumer's budget shall not exceed the average per capi-
ta cost of services provided to individuals with a brain injury in a
nursing facility.
14. Unless approved by the department pursuant to subsection
13(b) through (e) of this section, if a CDO service is ex-

dited to a point in which expansion necessitates a budget allow-
ance increase, the entire service shall only be covered via a tradi-
tional (non-CDO) waiver service provider.
15. A support broker shall:
   a. Provide needed assistance to a consumer with any aspect
   of CDO or blended services;
   b. Be available to a consumer twenty-four (24) hours per day,
   seven (7) days per week;
   c. Comply with applicable federal and state laws and require-
ments;
   d. Continually monitor a consumer's health, safety, and wel-
fare; and
   e. Complete or revise a plan of care using person-centered
planning principles.
16. For a CDO participant, a support broker may conduct an
assessment or reassessment.
17. Financial Management Services shall:
1. Include managing, directing, or dispersing a consumer's
funds identified in the consumer's approved CDO budget;
2. Include payroll processing associated with an individual
hired by a consumer or the consumer’s representative;
3. Include withholding local, state, and federal taxes and mak-
ing payments to appropriate tax authorities on behalf of a consumer;
4. Be performed by an entity:
   a. Enrolled as a Medicaid provider in accordance with 907 KAR
1:672; and
   b. With at least two (2) years of experience working with ac-
cquired brain injury
5. Include preparing fiscal accounting and expenditure reports
for:
   a. A consumer or a consumer's representative; and
   b. The department.

Section 9. Reimbursement and Coverage. (1) The department
shall reimburse a participating provider for a service provided to a
Medicaid eligible person who meets the ABI long term care waiver
program requirements as established in this administrative regu-
lation.
2. The department shall reimburse an ABI participating long
term waiver provider for a prior-authorized ABI long term waiver
service, if the service is:
   a. Included in the plan of care and is medically necessary, and
   b. Essential to provide an alternative to institutional care to an
individual with acquired brain injury that requires maintenance
services.
3. Exclusions to acquired brain injury long term waiver
program. Under the ABI long term waiver program, the department
shall not reimburse a provider for a service provided:
   a. To an individual who has a condition identified in 907 KAR
3:210, Section 8; or
   b. Which has not been prior authorized as a part of the plan of
care.
4. Payment amounts.
   a. A participating ABI long term waiver service provider shall
be reimbursed a fixed rate for reasonable and medically necessary
services for a prior-authorized unit of service provided to a re-
ceipient.
   b. A participating ABI long term waiver service provider certi-
   fied in accordance with this administrative regulation shall be reim-
   bursed at the lesser of:
      1. The provider's usual and customary charge; or
      2. The Medicaid fixed upper payment limit per unit of service as
      established in subsection (5) of this section.
      5. Fixed upper payment limits.
         (a) The following rates shall be the fixed upper payment limits,
         in effect on the effective date of this administrative regulation, for
         ABI long term care waiver services in conjunction with the corre-
         sponding units of service:

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>1 month</td>
<td>$375.00 - limited to one (1) unit per member per month</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>15 minutes</td>
<td>$5.56 - limited to 160 units per member, per calendar week</td>
</tr>
<tr>
<td>Restpnt Care</td>
<td>5 minutes</td>
<td>$4.00 - limited to 5760 units, equal to 1440 hours, per member, per calendar year</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>15 minutes</td>
<td>$3.19 - limited to 160 units per member, per calendar week</td>
</tr>
<tr>
<td>Service</td>
<td>Unit</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>15 minutes</td>
<td>$4.03 - limited to 160 units per member, per calendar week alone or in combination with supported employment services.</td>
</tr>
<tr>
<td>Supported Employment</td>
<td>15 minutes</td>
<td>$7.98 - limited to 160 units per member, per calendar week alone or in combination with adult day training.</td>
</tr>
<tr>
<td>Behavior Programming</td>
<td>15 minutes</td>
<td>$33.61 - limited to 80 units per member, per calendar month for the first three (3) months; after initial three (3) months limited to forty-eight (48) units per member, per month.</td>
</tr>
<tr>
<td>Counseling - Individual</td>
<td>15 minutes</td>
<td>$23.64 - limited to sixteen (16) units per member, per month.</td>
</tr>
<tr>
<td>Counseling - Group</td>
<td>15 minutes</td>
<td>$5.75 - limited to 48 units per member, per calendar month.</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>15 minutes</td>
<td>$25.90 - limited to 52 units per member, per calendar month.</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>15 minutes</td>
<td>$28.41 - limited to 52 units per member, per calendar month.</td>
</tr>
<tr>
<td>Specialized Medical Equipment and Supplies (see subsection (2) of this section)</td>
<td>Per Item</td>
<td>As negotiated by the department.</td>
</tr>
<tr>
<td>Environmental Modification</td>
<td></td>
<td>Actual cost not to exceed $2000 per member, per calendar year.</td>
</tr>
<tr>
<td>Supervised Residential Care Level I</td>
<td>(1) calendar day</td>
<td>$200.00 - Limited to one (1) unit per member, per calendar day.</td>
</tr>
<tr>
<td>Supervised Residential Care Level II</td>
<td>(1) calendar day</td>
<td>$150.00 - Limited to one (1) unit per member, per calendar day.</td>
</tr>
<tr>
<td>Supervised Residential Care Level III</td>
<td>(1) calendar day</td>
<td>$75.00 - Limited to one (1) unit per member, per calendar day.</td>
</tr>
<tr>
<td>Nursing Supports</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 28 units per member, per calendar week.</td>
</tr>
<tr>
<td>Family Training</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 8 units per member, per calendar week.</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 52 units per member, per calendar month.</td>
</tr>
<tr>
<td>Assessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Assessment or Reassessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Consumer Directed Options</td>
<td></td>
<td>Service limited by dollar amount prior authorized by OIO based on DMS approved consumer budget.</td>
</tr>
<tr>
<td>Home and Community Supports</td>
<td></td>
<td>Service limited by dollar amount prior authorized by OIO based on DMS approved consumer budget.</td>
</tr>
<tr>
<td>Community Day Supports</td>
<td></td>
<td>Service limited by dollar amount prior authorized by OIO based on DMS approved consumer budget.</td>
</tr>
</tbody>
</table>

proved consumer budget

<table>
<thead>
<tr>
<th>Goods and Services</th>
<th>Description</th>
<th>Cost or Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support Broker</td>
<td>One (1) unit equal to one (1) calendar month</td>
<td>$375.00 - Limited to one (1) unit per member, per calendar month.</td>
</tr>
<tr>
<td>Financial Management Services</td>
<td>Fifteen (15) minutes</td>
<td>$12.50 (not to exceed eight (8) units or $100.00 per month)</td>
</tr>
</tbody>
</table>

(b) Specialized medical equipment and supplies shall be reimbursed on a per item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:
1. They are not covered through the Medicaid durable medical equipment program established in 597 KAR 1:479; and
2. They are provided to an individual participating in the ABI waiver program.

(c) Respite care may exceed 1440 hours in a twelve (12) month period if an individual's usual caregiver is unable to provide care due to any of:
- Death in the family;
- Sickness or illness; or
- Hospitalization.

(d) Payment for respite care provided in a setting other than a nursing facility shall not include the cost of room and board. If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.

(e) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall be made only for the supervision and training required as the result of the ABI recipient's disability and shall not include payment for supervisory activities normally rendered.

(f) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III). For an individual receiving supported employment services, documentation shall be maintained in the individual's record demonstrating that the services are not currently available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(6) Payment Exclusions. Payment shall not include:
(a) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility. If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual;
(b) The cost of maintenance, upkeep, or an improvement, or an environmental modification to a group home or other licensed facility;
(c) Excluding an environmental modification as established in the Acquired Brain Injury Services and Reimbursement Program Manual, the cost of maintenance, upkeep, or an improvement to a recipient's place of residence;
(d) The cost of a service that is not listed in the approved plan of care; or
(e) A service provided by a family member unless provided under an approved service through consumer directed option.

(7) Records Maintenance. A participating provider shall:
(a) Maintain fiscal and service records for a period of at least six (6) years; and
(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to subsection (1) of this section or 597 KAR 1:672, Sections 2, 3, and 4; and
(c) Upon request, make available service and financial records to a representative or designee of the:  

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This administrative regulation is necessary to establish the coverage and reimbursement provisions relating to acquired long term care waiver services in order to provide an alternative to institutional care for individuals with ABI who require maintenance services.

(2) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.

(3) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation is expected to impact individuals diagnosed with acquired brain injury by providing home and community-based services as an alternative to institutionalized services. This administrative regulation allows qualified Medicaid enrollee providers in the Commonwealth of Kentucky to receive reimbursement for acquired brain injury services provided to qualifying enrolled individuals. During the first year, the budget allows for fifty (50) individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 100 individuals to receive these waiver services, totaling 150 individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities choosing to provide ABI services and receive Medicaid reimbursement are required to be enrolled as a Medicaid provider. During the first year, the budget allows for fifty (50) individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 100 individuals to receive these waiver services, totaling 150 individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entity identified in question (5). The new administrative regulation offers an alternative to institutional care for individuals that have reached a plateau in their rehabilitation level and require maintenance services to avoid institutionalization and to live safely in their community. The long term nature of the program will complete the continuum of care and complement Kentucky's existing acute brain injury waiver program which focused on intensive rehabilitation services. The waiver program also provides the option for self-directed services for individuals.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates a cost of approximately $2.3 million during the state fiscal year 2009 to serve 50 individuals with this program.
(b) On a continuing basis, DMS estimates a cost of approximately $12.1 million during the state fiscal year 2010 as a result of enrolling an additional 100 individuals (for a total enrollment of 150 individuals) in the program.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This program does require an increase in funding which was included and approved by the legislation in the 2008 and 2010 biennial budget.

(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 applied in this administrative regulation because it is applicable equally to all those individuals or entities regulated by it. 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? The Department for Community Based Services (DCBS), Department for Aging and Independent Living (DAIL), Area Agencies on Aging (AAA), Protection and Advocacy (P&amp;A), and Vocational Rehabilitation will be impacted by this administrative regulation. This amendment will affect Medicaid eligible individuals diagnosed with ABI who choose to access these waiver services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers.

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

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

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

   (c) How much will it cost to administer this program for the first year? Approximately 2.3 million dollars is the projected cost during the first year.

   (d) How much will it cost to administer this program for subsequent years? Approximately 12.1 million dollars is the projected cost during the subsequent year.

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

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

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, November 12, 2008)

11 KAR 6:000. Teacher scholarships.

RELATES TO. KRS 164.740, 164.744(2), 164.753(3), 164.769
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5)(6)(f)
NECESSITY, FUNCTION, AND CONFORMITY. KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) *Authority* means is defined in KRS 164.769(1).
   (2) *Critical shortage area* is defined in KRS 164.769(2)(a).
   (3) *Default means the status of an obligation under the program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation/thereof.
   (4) *Eligible program of study* is defined in KRS 164.769(2)(b).
   (5)(4) *Expected family contribution* is defined in KRS 164.769(2)(c).
   (6)(6) *Kentucky Teacher Internship Program* or *KTIP* means the one (1) year of supervision, assistance, and assessment that is (a) Required by KRS 161.000 and established in 16 KAR (7:01); and
   (b) Also referenced as the beginning teacher internship.
   (7)(6) *Participating institution* is defined in KRS 164.769(2)(d).
   (8)(7) *Professional Teaching Certificate* means the document issued to:
   (a) An individual upon successful completion of the beginning teacher internship; or
   (b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.
   (9)(8) *Public school* means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.
   (10)(9) *Qualified teaching service* is defined in KRS 164.769(2)(e).
   (11)(10) *Semester* is defined in KRS 164.769(2)(f)
   (12)(11) *Summer term* is defined in KRS 164.769(2)(g).
   (13)(12) *Teaching* means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:060, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.
   (2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.
   (3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:
   (a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.
   (b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.
   (c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.
   (2) The maximum teacher scholarship award for a student classified as a junior, senior, post-baccalaureate, or graduate shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).
   (3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).
   (4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post-baccalaureate or master's degree will be completed shall be:
   (a) $210 per credit hour if the student is enrolled during a regular semester; or
   (b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.
   (2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.
   (3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.
(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being retained, the amount being retained, and the reason funds are being retained.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12(43) of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(a) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2)(a) If a recipient has received loans or scholarships from more than one (1) program that is administered by the authority, and requests which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently.

(b) Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(3) If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.615, 164.766, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.615, 164.766, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) If the event that a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, any refund of payments previously made shall not be given to the recipient.

Section 7. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to any and all collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTP shall be removed from default status.

Section 8.7 Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for a maximum of two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability:

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9.8 Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10.9 Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11.10 Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 12.11 Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority on a prior occasion or fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.
due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:
   (a) A clear and conspicuous written statement;
   (b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;
   (c) Consistently administered by the institution; and
   (d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:
   (a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or
   (b) Be a separate and distinct policy adopted by the institution that is based upon:
      1. The requirements of applicable state law; or
      2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:
   (a) CAP grant;
   (b) KTG;
   (c) Teacher scholarship;
   (d) Kentucky Educational Excellence Scholarship;
   (e) National Guard tuition assistance; and
   (f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over award and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

   (b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

   (c) If a teacher scholarship recipient's enrollment is terminated with no associated tuition and fees by the institution, the full teacher scholarship shall be subject to:
      1. Cancellation, if not yet disbursed, or
      2. Refund if the teacher scholarship has already been disbursed.

Section 14143] Incorporation by Reference. (1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

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JERRY SHROAT, Chair
APPROVED BY AGENCY: August 20, 2008
FILED WITH LRC: September 11, 2008 at 2 p.m.
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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRR, November 12, 2008)

11 KAR 8:040. Deferment of teacher scholarship repayment.

RELATES TO: KRS 164.740, 164.744(2), 164.769
STATUTORY AUTHORITY: KRS 164.744(4), 164.753(3), 164.769(6)(j)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.744(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.769. KRS 164.769(6)(j) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships including deferments. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.744(1).

(2) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment due date for the obligation thereon.

(3) "Deferral" means a temporary waiver of the obligation of a teacher scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(4) "Eligible Institution" is defined in KRS 164.740(3).

(5) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:
   (a) Required by KRS 161.030 and established in 16 KAR 7.010; and
   (b) Also referenced as the beginning teacher internship.

(6) "Participating institution" is defined in KRS 164.769(2)(d).

(7) "Professional Teaching Certificate" means the document issued to:
   (a) An individual upon successful completion of the beginning teacher internship;
   (b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessment.

(8) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(9) "Semester" is defined in KRS 164.769(2)(f).

(10) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.
Section 2. Request for Deferment. (1) The recipient shall request a deferment in writing by submitting complete and accurate information on one (1) of the following forms, as appropriate:

(a) "Teacher Scholarship Program Request For School Enrollment Deferral";
(b) "Teacher Scholarship Program Request For Unemployment Deferral";
(c) "Teacher Scholarship Program Request For Disability Deferral";
(d) "Teacher Scholarship Program Request For Hardship Deferral";
(e) "KHEAA Teacher Scholarship Program Request For Alternative Certification Deferral"; or
(f) "KHEAA Teacher Scholarship Program Military Service Deferral Request".

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive the verification of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect on Repayments. (1) During a deferment, principal or interest repayments shall not be required. Interest shall:

(a) Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1), (3), (4), or (5) of this administrative regulation; and
(b) Not accrue during a period specified in Section 4(2) of this administrative regulation.

(2) The authority shall not be required to grant a deferment if the deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) If, during a deferment, the recipient resumes full-time enrollment in a teacher education program at a participating institution or renders qualified teaching service, the deferment shall nullify the prior commencement of repayment, and a promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 8.030.

Section 4. Types of Deferments. Except as provided in subsection (6) of this section, if the requirements established in this section are met, the authority shall grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, military service deferment, alternative certification deferment, or qualified teaching service deferment.

(1) Enrollment deferment.

(a) An enrollment deferment shall be a deferment granted to a recipient who is enrolled on at least a half-time basis at an eligible institution in the United States. Each semester the recipient shall provide to the authority evidence of the enrollment on the "Teacher Scholarship Program Request for School Enrollment Deferral" form.

(b) The authority shall grant deferment of repayment upon this basis for a period not to exceed an aggregate of either:

1. Forty-eight (48) months for a recipient enrolled in a baccalaureate program; or
2. Sixty (60) months for a recipient enrolled in a graduate program.

(2) The authority shall grant deferment of repayment for periods not to exceed an aggregate of thirty-six (36) months for any one (1) or combination of the following circumstances, unless a documented extenuating circumstance is approved by the executive director of the authority:

(a) Disability deferment

1. A disability deferment shall be a deferment granted to a recipient who is:
   a. Temporarily totally disabled and, therefore, unable to obtain full-time employment or attend school; or
   b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who:
     i. Requires continuous (twenty-four (24) hour) nursing or similar care by the recipient; and
     ii. Is confined to a hospital, nursing home, intermediate care facility, or similar institution.

2. For purposes of a disability deferment, a recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if the person suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance.

3. The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with subparagraphs 1 and 2 of this paragraph. The recipient shall be solely responsible for securing the physician's certification.

4. The authority shall grant a disability deferment subject to an annual review of the physician's certification.

(5) Hardship deferment. The authority shall not grant a hardship deferment if:

1. In a teacher education program or employment in a qualified teaching service position is temporarily interrupted due to circumstances beyond the recipient's control, including major illness, accident or death in the family, after which the recipient intends to resume the enrollment or qualified teaching position; or
2. The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Alternative certification deferment.

(a) A deferment shall be granted to a recipient who has received a provisional certification by the Kentucky Education Professionals Standards Board (EPSS) under one (1) of the alternative routes to teacher certification established by the EPSS in 16 KAR Chapter 9.

(b) The deferment shall be granted for up to thirty-six (36) months in order to allow sufficient time for the recipient to complete the Kentucky Teacher Internship Program and to obtain professional teaching certification.

(5) Qualified teaching service deferment.

(a) A deferment shall be granted to a recipient who, due to current employment in a qualified teaching service position, may reasonably be expected, solely with the passage of six (6) months or less time, to qualify for cancellation benefits pursuant to 11 KAR 8.030.

(b) The authority shall grant a deferment of the obligation to repay the teacher scholarship during the period of time in which the recipient is making payments or performing qualified teaching service for another program if:

1. The recipient received loans or scholarships from more than one (1) program that:
   a. Is administered by the authority; and
b. Required a period of qualified teaching service for repayment or cancellation; and
   2. The recipient is either:
      a. Obligated to concurrently make cash payments on the teacher scholarship and other program; or
      b. Performing qualified teaching service to fulfill the other program's requirements.
   (6) Upon default of a repayment obligation under this program, a recipient shall be permanently barred from eligibility for the other any-and-all deferrals provided for in this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Teacher Scholarship Program Request For School Enrollment Defe rent", March 2002;
   (b) "Teacher Scholarship Program Request For Unemployment Defe rent", March 2002;
   (c) "Teacher Scholarship Program Request For Disability Defe rent", March 2002;
   (d) "Teacher Scholarship Program Request For Hardship Defe rent", March 2002;
   (e) "KHEEA Teacher Scholarship Program Request For Alternative Certification Defe rent", November 2007; and
   (f) "KHEEA Teacher Scholarship Program Military Service Defe rent Request", November 2007.
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY SHROAT, Chair
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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, November 12, 2008)

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

RELATES TO: KRS 164.7691
STATUTORY AUTHORITY: KRS 164.748(4), 164.7691(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7691(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).
   (2) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.
   (3) "Disbursement" means the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student in accordance with 11 KAR 14:030, Section 2.
   (4) "Default means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.
   (5) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

   (6) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.
   (7) "Qualified service" is defined in KRS 164.7691(3)(6).

Section 2. (1) The scholarship recipient shall immediately become liable for repayment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, if the scholarship recipient:
   (a) Ceases enrollment at the school of osteopathic medicine prior to completion of the program of study;
   (b) Begins, but fails to complete, an internship leading to licensure to provide qualified service;
   (c) fails to begin a residency in a qualified field immediately following completion of the program of study at the school of osteopathic medicine or immediately following completion of an intervening internship; or
   2. Begins, but fails to complete, a residency in a qualified field;
   (d) Fails to obtain a license to practice osteopathic medicine in the Commonwealth; or
   (e) Otherwise fails to perform qualified service in full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year after obtaining a license to practice osteopathic medicine.
   (2) If the authority has reason to believe that an event specified in subsection (1) of this section has occurred, the authority shall send the scholarship recipient's last known address written notification of demand for payment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, that shall be effective upon mailing.
   (3) The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. If more than one (1) promissory note has been issued to the scholarship recipient and remains unpaid, payments shall first be applied to the earliest unpaid promissory note. Payments shall be applied first to accrued interest and then to principal.

Section 3. If the scholarship recipient obligated for repayment remits a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note in the order in which the promissory notes were executed.

Section 4. (1) The interest rate applicable to repayment of a promissory note under this program shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.
   (2) If [in the event that] a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's completion of an eligible program of study and provision of qualified service through full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy, [the refund of payments previously made shall be given to the recipient.

Section 5. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collection and shall be subject to the any-and-all collection charges and fees assessed by that agency.
   (2) A recipient whose repayment obligation has defaulted and who subsequently begins providing qualified service in the Commonwealth of Kentucky [as specified above] shall be removed from default status.

JERRY SHROAT, Chair
APPROVED BY AGENCY: August 20, 2008
FILED WITH LRC: September 11, 2008 at 2 p.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.
Section 1. Definitions. (1) "Authority" is defined in KRS 164.7401(1).

(2) "Defereent" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(3) "Defereent" means a temporary waiver of the obligation of an osteopathic medicine scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes, executed between the recipient and the authority, which is granted by the authority for a specified period of time, upon a showing of cause by the recipient.

(4) "Defereent" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.

(5) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

(5) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(6) "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. Request for Defereent. (1) The osteopathic medicine scholarship recipient shall request a defereent in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for defereent in accordance with this administrative regulation.

(2) The recipient's submission of a request for defereent shall constitute authorization for the authority to request and receive from a third-party verification of facts represented by the recipient.

Section 3. Effect on Repayment. (1) During a defereent:
(a) A principal or interest repayment shall not be required, and
(b) Interest shall continue to accrue on the unpaid principal balance owed by the recipient during the period specified in Section 4(4) of this administrative regulation.

(2) The authority shall not grant a defereent if a defereent would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) A promissory note for which repayment is deferred in accordance with this administrative regulation shall subsequently be cancelled in accordance with KRS 164.7891(5) if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Defereents. Except as provided in subsection (5) of this section, the authority shall grant defereent of repayment for a period of twelve (12) months, not to exceed an aggregate of thirty-six (36) months, excluding military service deferment or an internship and residency defereent, for the circumstances described in this section:

(1) Disability defereent.
(a) A defereent may be granted to an osteopathic medicine scholarship recipient who is:
1. Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or
2. Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.
(b) For purposes of this defereent, an osteopathic medicine scholarship recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.
(c) The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the requirements established in paragraph (b) of this subsection. The recipient shall be solely responsible for securing the physician's certification and ensuring that it is received by the authority.
(d) If the defereent is granted for a period of less than one (1) year at a time, the defereent shall be subject to periodic review of a physician's certification every six (6) months.
(e) After the third year of a recipient's defereent, pursuant to this subsection, the authority shall cancel the defereent if it reasonably determines the recipient is not committed to the certification of a licensed physician other than the scholarship recipient that the scholarship recipient is totally disabled and the disability is expected to be permanent and continue to preclude the scholarship recipient's school attendance and employment for an indefinite time.

(2) Hardship defereent.
(a) The authority shall determine that a hardship exists and grant a hardship defereent if
1. (a) Enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances beyond the recipient's control, including natural disaster or death in the family, after which the recipient intends to resume the enrollment or qualified service position; or
2. (b) The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.
(b) This defereent shall:
1. Be granted for a period of less than one (1) year; and
2. Be subject to periodic review of documentation every six (6) months.
(c) Military service defereent. The authority shall grant a military service defereent to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.
(d) Internship and residency defereent.
(a) 1. An osteopathic medicine scholarship recipient shall receive a defereent during the normal term of service in a single American Osteopathic Association approved rotating internship in osteopathic medicine prior to beginning practice in osteopathic medicine.
2. An osteopathic medicine scholarship recipient shall receive a defereent during the normal term of service in:
   a. A single American Osteopathic Association approved residency program in a qualified field; or
   b. The Family Practice plus One Year Neuromuscular Medicine (FP+1) residency program.
(b) The recipient shall submit to the authority verification that he is enrolled in the internship or residency program, the start date, and anticipated end date of the internship or residency from the hospital, clinic, or other institution where the internship or residency is being performed.
(c) This verification shall contain the following information:
   1. The recipient's name, Social Security number, current home address, and telephone number;
   2. The name and address of the hospital, clinic, or other institution where the internship or residency is being performed;
   3. The name, title, address, telephone number, and signature
on a statement of certification or verification of the person supervising
the recipient's internship or residency program, and
4. The expected date that the internship or residency program
will be completed.

(d) A recipient whose period of obligated service has been
defaulted under this subsection shall begin full-time practice in the
Commonwealth of Kentucky as a licensed doctor of osteopathy for
a majority of the calendar year in a qualified field immediately fol-
lowing the completion of the initial residency period and licensure
to practice osteopathic medicine in the Commonwealth of Ken-
tucky. (5) Upon default of a repayment obligation under this program,a
recipient shall be permanently barred from eligibility for all other
grants and/or deferments provided for in this administrative regu-
lation.

JERRY SHROAT, Chair
APPROVED BY AGENCY: August 20, 2008
FILED WITH LRC: September 11, 2008 at 2 p.m.
CONTACT PERSON. Ms. Diana L. Barber, General Counsel,
Kentucky Higher Education Assistance Authority, P.O. Box 798,
Frankfort, Kentucky 40602-0798, phone (502) 695-7298, fax (502)
699-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, November 12, 2008)

11 KAR 15:090. Kentucky Educational Excellence Scholar-
ship (Kees) Program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874,
164.7877, 164.7879, 164.7881, 164.7885, 164.7893
STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3),
164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.7877(3) requires the Authority to administer the Kentucky
Educational Excellence Scholarship (Kees) trust fund [to adminis-
ter the funds appropriated to the trust fund for the program]. KRS
164.7874(14) requires the Authority to determine the Kees cur-
culum's courses of study. KRS 164.7879(3)(c) requires the Authority
to determine the eligibility of a noncertified, nonpublic high
school graduate and for a GED recipient for a supplemental award.
KRS 164.7874(3) requires the Authority to establish aSat score to
convert an SAT score to an ACT standard. KRS 164.7881(6) requires
the Authority to establish a five (5) year postsecondary education
program standard. KRS 164.7871(14)(a) requires the Authority
to establish overall award levels for the program. KRS 164.7879(2)(c)
requires the Authority to determine eligibility for children of parents
who are in the military and who claim Kentucky as their home of
record. KRS 164.7881(4)(c) requires the Authority to identify
equivalent undergraduate programs of study. This administrative
regulation establishes those requirements relating to the Kentucky
Educational Excellence Scholarship (Kees) Program.

Section 1. Definitions. (1) "Academic term" means the fall or
spring semester or their equivalence under a trimester or quarter
system at a postsecondary education institution and shall not in-
clude summer sessions.
(2) "Accredited out-of-state high school" means a high school
that is:
(a) Located in a state other than Kentucky or in another coun-
yand
(b) A member of an organization belonging to the Commission
on International and Trans-Regional Accreditation.
(3) "ACT" means the test:
(a) Administered to a student for entrance to a Kentucky post-
secondary education institution; and
(b) Owned by the ACT Corporation of Iowa City, Iowa.
(4) "Advanced placement" means a cooperative educational
endeavor between secondary schools and colleges and universi-
ties administered by the College Board of the Educational Testing
Service and recognized by KDE.

(5) "Cumulative grade point average" means the total grade
point average for a postsecondary education student as reported
by the postsecondary education institution where the student
is currently enrolled.
(6) "Department of Defense school" means a school operated
by the U.S. Department of Defense for the purpose of providing a
high school education to a child whose custodial parent or guar-
dian is in active military or diplomatic service in a state other than
Kentucky or in another country.
(7) "Enrolled" means the status of a student who has com-
pleted the registration requirements, except for the payment of
tuition and fees, at a postsecondary education institution
that the student is attending.
(8) "GED" means a general educational development diploma
awarded to a student.
(9) "International baccalaureate course" means a course in a
secondary education program sponsored by the International Bac-
calaureate Organization and recognized by the KDE in 704 KAR
3 940, Section 2(3)(b).
(10) "Kee" means the Kentucky Department of Education
authorized and established pursuant to KRS 156.010.
(11) "Sat" means the test:
(a) Administered to a student for entrance to a Kentucky post-
secondary education institution; and
(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation
and Reporting. (1) An eligible high school student's grade point
average for an academic year shall be calculated using each grade
awarded for all courses taken during an academic year.
(2)(a) Except as provided in paragraph (b) of this subsection,
an eligible high school student's grade point average shall be cal-
culated by:
1. Taking the number of units in a course multiplied by the
course grade as expressed on a 4.0 point grading scale where 4.0
is an "A" and 0.0 is an "F";
2. Adding the total number of points accumulated for an aca-
demic year; and
3. Dividing the total number of points accumulated in subpara-
graph 2 of this paragraph by the total number of units for the aca-
demic year.
(b) For an eligible high school student taking an advanced
placement or international baccalaureate course during the aca-
demic year, the grade for the advanced placement or Interna-
tional baccalaureate course assigned shall be calculated using a
5.0 point scale where 5.0 is an "A" and 1.0 is an "F".
(3) The grade point average reported for an eligible high school
student for each academic year shall include all information as set
forth in KRS 164.7885(1) and be submitted to the authority in ei-
ther an electronic or hard copy format.
(4) A high school student who participated in an educational
high school foreign exchange program or the Congressional Page
School that was approved by the student's local high school shall
have the student's grade point average reported in accordance with
KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guar-
dians in Active Military Service. (1)(a) For purposes of determin-
ing eligibility under the provisions of KRS 164.7879(2)(c), a high
school student shall establish that the custodial parent or guardian
meets the requirements of KRS 164.7879(2)(c) and shall sub-
mit the "Home of Record Certification" to the Authority.
(b) The Authority annually shall notify the eligible high school
student and the custodial parent or guardian of the student's eligi-
bility.

(2)(a) A high school student, determined to be eligible for the
Kees program under the terms of KRS 164.7879(2)(c) and sub-
section (1)(a) of this section, shall be responsible for:
1. Requesting grade and curriculum information from the local
school; and
2. Requesting that the local school submit the information to
the Authority using the "Curriculum Certification" Form and the
"Data Submission" Form.
(b) [The Authority] Upon receipt of curricular and grade in-
formation from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEEs Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Chapter 9 of this administrative regulation;
2. Verify that the out-of-state high school or Department of Defense school is an accredited out-of-state high school; and
3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEEs Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:
(a) Has earned a base scholarship award in high school;
(b) Has completed the KEEs curriculum as set forth in subsection (2) of this section;
(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and
(d) Is enrolled in a participating institution in an eligible program.
(2) Except as provided in subsection (4) of this section, the KEEs curriculum shall consist of the courses and electives required by this subsection.
(a) For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.
(b) The following subject areas and standards shall be applicable for electives. [An elective in—]
1. A social studies, science, mathematics, English/language arts, or arts and humanities elective shall be a course whose academic content is as rigorous as the content established for courses in the area in 703 KAR 4:060.
2. A physical education or health elective shall be a course whose academic content is as rigorous as the content established for courses in the area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.
3. A foreign language elective [foreign languages] shall be a course whose academic content includes teaching the spoken and written aspects of the language.
4. An agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways elective shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.
(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(14) shall be eligible to earn a KEEs award for that year upon:
(a) Completion of no fewer than three (3) courses of study; and
(b) Satisfying the provisions of KRS 164.7879.

A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:
(a) The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document "Academic Expectations" that is incorporated by reference in 703 KAR 4:060;
(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution;
(c) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEEs curriculum.

Section 5 Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.
(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.
(3) Pursuant to KRS 164.7851(8), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:
(a) Landscape architecture (04 0590); and
(4) Pursuant to KRS 164.7851(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:
(a) Has not received eight (8) semesters of a KEEs award;
(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:
1. Pharm. D.
2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or
3. A program contained on the Equivalent Undergraduate Programs List; and
(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

<table>
<thead>
<tr>
<th>Table C-2</th>
<th>Concordance Between SAT I Recentered V+M Score and ACT Composite Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAT I V+M</td>
<td>ACT Composite</td>
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<tr>
<td>1600</td>
<td>35-36</td>
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<tr>
<td>1590</td>
<td>35</td>
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<td>1580</td>
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<td>1470</td>
<td>33</td>
</tr>
<tr>
<td>1460</td>
<td>33</td>
</tr>
</tbody>
</table>
### Table: SAT V+M Scores to ACT Composite Scores

| 1450 | 32 | 1220 | 27 | 990 | 21 | 760 | 16 | 530 | 12 |
| 1440 | 32 | 1210 | 27 | 980 | 21 | 750 | 15 | 520 | 12 |
| 1430 | 32 | 1200 | 26 | 970 | 20 | 740 | 15 | 510 | 11 |
| 1420 | 32 | 1190 | 26 | 960 | 20 | 730 | 15 | 500 | 11 |
| 1410 | 32 | 1180 | 26 | 950 | 20 | 720 | 15 | 490 | 11 |
| 1400 | 31 | 1170 | 25 | 940 | 20 | 710 | 15 | 480 | 10 |
| 1390 | 31 | 1160 | 25 | 930 | 19 | 700 | 14 | 470 | 10 |
| 1380 | 31 | 1150 | 25 | 920 | 19 | 690 | 14 | 460 | 10 |

This table can be used to relate SAT V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, student's actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

### Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students

1. A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:
   - (a) The student is not a convict's felon;
   - (b) The date of the student's graduation is May 1999 or thereafter;
   - (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
   - (d) The student enrolls in a participating institution within five (5) years of graduation from high school.

2. A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:
   - (a) The student is not a convict's felon;
   - (b) The student's 18th birthday occurs on or after January 1, 1999;
   - (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
   - (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
   - (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

3. A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:
   - (a) The parents meet the provisions of KRS 164.7879(2)(c)1 and 2;
   - (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
   - (c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

### Section 9. Administrative Responsibilities and Expenses of Program

1. The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

2. The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

3. The Authority shall develop an allotment schedule for the release of the administrative funds.

### Section 10. Incorporation by Reference

1. The following material is incorporated by reference:
   - (a) "Home of Record Certification", June 2005;
   - (b) "Curriculum Certification", June 2005;
   - (c) "Data Submission", June 2005; and
   - (d) "Equivalent Undergraduate Programs List", June 2005.

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY SHROAT, Chair
APPROVED BY AGENCY: August 20, 2008
FILED WITH LRC: September 11, 2008 at 2 p.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, November 12, 2008)


NECESSITY, FUNCTION, AND CONFORMITY: 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-41 and 1070d-37, and 34 C.F.R. 654.30 and 654.41 require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

### Section 1. Definitions

1. "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date.
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(2) "Authority" is defined in KRS 164.740(1).
(3) "Award year" means the period of time from July 1 of one (1) year through June 30 of the following year.
(4) "Eligible student" is defined in KRS 164.740(5).
(5) "Federal act" is defined in KRS 164.740(7).
(6) "High school" means a school located within or outside of the Commonwealth enrolling students for secondary school instruction that is:
(a) Operated by a state;
(b) A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments of education or one (1) of the seven (7) independent regional accrediting associations.
(c) Any other evidence recognized by the Commonwealth as the equivalent of a high school diploma.
(7) "Participating Institution" is defined in KRS 164.740(13).
(8) "SAT score" means the sum of the scores achieved on the critical reading and mathematics components of the Scholastic Aptitude Test at a national test site on a single national test date.
(9) "Scholar" means an individual who is selected as a Byrd Scholar.
(11) "Secretary" is defined in KRS 164.740(19).

Section 2. Eligibility Criteria. (1) Initial eligibility. To be eligible for selection as a scholar, an individual shall meet the initial eligibility criteria established in 34 C.F.R. 654.40.
(2) Continued eligibility. To remain eligible for additional awards under this program for subsequent award years, a scholar shall meet the continued eligibility criteria established in 34 C.F.R. 654.51.

Section 3. Initial Application Procedures. (1) In order for an eligible student to be considered for an award under this program:
(a) The eligible student shall not have applied for consideration in a prior year; and
(b) The requirements of either subsection (2) or (3) of this section shall be met.
(2) High school students.
(a) The eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program Application set forth in 11 KAR 4.080, Section 1(5)(a).
(b) The application shall be accompanied by the following supporting documentation pertaining to the eligible student:
1. A certified transcript showing the cumulative grade point average of at least 3.80 earned at a high school during the 12th grade year and each of the two years prior thereto;
2. A copy of the ACT score or SAT score;
3. A high school guidance counselor's recommendation, not exceeding 150 words, pertaining to the student's promise of continued academic achievement, and
4. A listing of honors, activities, and community service performed during high school.
(3) GED recipients.
(a) A GED coordinator shall nominate the eligible student, and submit to the authority a completed application by June 30 on the Robert C. Byrd Honors Scholarship Program Application for GED Recipients set forth in 11 KAR 4.080, Section 1(5)(b).
(b) The application shall be accompanied by the following supporting documentation pertaining to the eligible student:
1. An official General Education Development score certification;
2. The GED coordinator's recommendation, not exceeding 150 words, pertaining to the student's promise of continued academic achievement.

Section 4. Nomination Procedures. Each participating high school shall select and submit applications as follows:
(1) Number of nominations per school. A participating high school shall submit nominations according to the following guidelines:
(a) High schools with enrollments of 1,500 or more may nominate a maximum of five (5) applicants;
(b) High schools with enrollments of 1,000-1,499 may nominate a maximum of four (4) applicants;
(c) High schools with enrollments of 500-999 may nominate a maximum of three (3) applicants; and
(d) High schools with enrollments of less than 500 may nominate a maximum of two (2) applicants.
(2) A participating high school shall nominate only eligible students who:
(a) Have a minimum:
1. ACT score of twenty-three (23); or
2. SAT score of 1060; and
(b) Have a minimum 3.5 cumulative grade point average as certified by the high school guidance counselor.
(3) A GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall be reviewed to ensure compliance with the requirements set forth in Sections 2, 3, and 4 of this administrative regulation.
(2) The authority shall select the applicants according to the following procedures.
(3) The authority shall evaluate and score applications on a scientific basis by a stratified random technique, with consideration given to demonstrated outstanding academic achievement and promise of continued academic achievement and regional representation throughout the state.
(4) At least one (1) scholar shall be selected among the GED recipients. GED recipients shall be selected with consideration to demonstrated outstanding academic achievement and promise of continued academic achievement as indicated by the GED examination scores as well as the GED coordinator's recommendation.
(5) A scholar shall be selected from eligible applicants without regard to:
(a) The applicant's race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need;
(b) Whether the scholar attended a high school located within or outside of the Commonwealth; or
(c) Whether the participating institution that the scholar plans to attend is public or private or is within or outside the Commonwealth.
(6) A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority.

Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, in writing of their status not later than ninety (90) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award shall be governed by 34 C.F.R. 654.50 and 34 C.F.R. 654.51(b).
(2) A scholar shall receive an aggregate maximum of $6,000 over four (4) years for an undergraduate or an equivalent graduate program of study if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance.
(2) The award shall be paid in at least two (2) disbursements in the amount of:
(a) One-half (1/2) in the fall term; and
(b) One-half (1/2) in the spring term.
(3) The funds shall be disbursed by the authority to the educational institution for either subsequent delivery to the scholar or application of the funds to the account of the scholar.

(4) (a) Except as provided in paragraph (b) of this subsection, the award shall be utilized within twelve (12) months of the time of initial award.

(b) The authority's executive director may authorize a postponement of the award utilization.

1. The postponement shall be for up to twelve (12) additional months from the date the scholar:
   a. Otherwise would have enrolled in the institution after the scholarship award was made; or
   b. Interrupts enrollment.

2. A postponement shall be granted only if:
   a. There is sufficient good cause; and
   b. The scholar requests in writing, before the payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.

(c) A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (b) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.

(d) The authority may extend the twelve (12) month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

JERRY SHROAT, Chair
APPROVED BY AGENCY: August 20, 2008
FILED WITH LRC: September 11, 2008 at 2 p.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 695-7299.

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
Office of the Commissioner
(As Amended at ARRS, November 12, 2008)


RELATES TO: KRS 40.353
STATUTORY AUTHORITY: KRS 40.353
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.353 authorizes the Kentucky Department of Veterans Affairs (KDVA) to award the Kentucky Medal for Freedom to eligible recipients and to maintain a Kentucky Medal for Freedom honor roll. This administrative regulation establishes the requirements for the Kentucky Medal for Freedom program.

Section 1. Definitions. (1) "Applicant" means a person, eighteen years old or older, who is seeking the Medal for Freedom on behalf of the deceased recipient.

(2) "Immediate next of kin" means the person or persons with whom the Medal for Freedom is entrusted using the following order of priority: widow or widower; children; parents (unless legal custody was granted to another person); blood or adoptive relative granted legal custody; siblings in the order of age (oldest first); grandparents; other relatives; or close friend or associate.

(3) "Recipient" means the deceased military person who was killed in action and is being honored by award of the Medal for Freedom.

Section 2. Application Procedure toNominate Recipient. (1) Any adult, age eighteen (18) or older, may nominate someone to receive the Kentucky Medal for Freedom.

(2) The nomination process shall be initiated by filling out a Kentucky Medal for Freedom Nomination.

(3) [Application.

(a) The application may be obtained by downloading one from the Kentucky Department of Veterans Affairs website at http://vetals.ky.gov or by requesting an application to be sent via U.S. postal service.

(b) All requests and inquiries concerning the Kentucky Medal for Freedom shall be directed to: Kentucky Department of Veterans Affairs, Kentucky Medal for Freedom Contact Person, 1111 B Louisville Rd., Frankfort, Kentucky 40601.

(4) Each Medal for Freedom that is awarded [under the Regulation] shall be presented to the primary next of kin using the order of priority:

(a) Widow or widower;

(b) Children;

(c) Parents, unless legal custody was granted to another person;

(d) Blood or adoptive relative granted legal custody;

(e) Siblings in the order of age, beginning with the oldest;

(f) Grandparents;

(g) Another relative; or

(h) Close friend or associate.

Section 3. Medal for Freedom Award Panel. (1) A panel of three full-time employees of the Kentucky Department of Veterans Affairs shall review all applications.

(2) The commissioner or the deputy commissioner shall act as chairperson of the panel.

(3) The other two members of the Panel shall be chosen from among the senior staff of the department, such as the executive director, Office of Kentucky Veterans Centers; Cemetery Branch Manager; Field Operations Branch Manager; cemetery directors; and administrators of the state veterans nursing homes.

(4) The award panel shall decide whether an application shall be approved and, if so, which primary next of kin shall receive the medal.

(5) Multiple medals for the same recipient may be awarded at the discretion of the award panel.

Section 4. Kentucky Medal for Freedom Honor Roll. The department shall establish a permanent honor roll, listing each recipient's name and branch of service.

(1) The Honor Roll shall reside on a permanent basis in the Office of the Commissioner, Kentucky Department of Veterans Affairs, Frankfort, Kentucky.

(2) The Honor Roll shall be made available for display at special occasions such as Memorial Day, Veterans Day, and during special ceremonies conducted at state and federal cemeteries located throughout the Commonwealth.

(3) During every legislative session, the department shall supply the Speaker of the Kentucky House of Representatives and the President of the Senate with a copy of the then-current Medal for Freedom recipients for publication in each chamber.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department of Veterans Affairs, 1111 B Louisville Road, Frankfort, Kentucky 40601. Monday through Friday, 8 a.m. to 4:30 p.m., and shall also be available on the department's Web site at http://vetals.ky.gov.

LESLIE E. BEAVERS, Commissioner
APPROVED BY AGENCY: September 12, 2008
FILED WITH LRC: September 15, 2008
CONTACT PERSON: Pamela Cupert, Executive Advisor, Kentucky Department of Veterans Affairs, 1111 B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 12, 2008)

103 KAR 1:150. Electronic data match and levy procedures.

RELATES TO: KRS 131.670, 131.672, 131.674, [-] 131.676, 205.772, 205.774

STATUTORY AUTHORITY: KRS 131.672(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.672(7) requires[authorizes] the Department of Revenue to promulgate an administrative regulation to establish the procedures to be followed by the Department of Revenue and Kentucky financial institutions in designing, developing, implementing and operating a data match and levy system to assist the Department of Revenue in collecting delinquent taxes and debts owed to the Commonwealth. This administrative regulation establishes the electronic data match and levy procedures.

Section 1. Definitions. (1) "Debt" is defined by KRS 131.670(1).
(2) "Debtor" is defined by KRS 131.670(2).
(3) "Delinquent taxpayer" is defined by KRS 131.670(4).
(4) "Department" is defined by KRS 131.670(3).
(5) "Financial Institution" is defined by KRS 131.670(5).
(6) "Levy" is defined in KRS 131.500(10).

Section 2. Electronic Data Match and Levy Program Implementation. (1) The department [or its authorized agent shall, in conjunction with financial institutions, design, develop, implement, and operate a data match system for the purpose of identifying and seizing the financial assets of delinquent taxpayers and debtors as identified by the department pursuant to KRS 131.670 - 131.676.
(2) The department or its authorized agent shall implement the data exchange. The department or its authorized agent shall have access to identifying information for a delinquent taxpayer or debtor who the department has identified to a financial institution through a data match for the purpose of levying the account of the delinquent taxpayer or debtor to pay the delinquent tax or debt.
(3) The department shall reimburse a financial institution for costs incurred for the implementation of the data match program, not to exceed $500, unless approved by the department prior to development and installation.

Section 3. Electronic Data Match Reporting. (1) A financial institution shall:
(2) Select a preferred matching method in the Data Matching Memorandum of Agreement;
(3) Exchange information with the department by way of an automated data exchange system; If the financial institution demonstrates to the department that it does not have the necessary computer capabilities to exchange information by way of an automated data exchange system, the department may issue a waiver to allow the financial institution to exchange information by paper;
(4) Submit information to the department on a quarterly basis in the format prescribed by the Financial [Institution] Data Match Specifications Handbook, using either the all accounts method or matched accounts method.

1. If a financial institution agrees to provide the information according to the all accounts method, the financial institution shall:
   a. Submit to the department, or the department's authorized agent, all accounts, within fifteen (15) days after receipt of the department, data files of open accounts for the data match; and
   b. Report the name, record address, Social Security number, Federal Employer Identification number, and account status [and other identifying information required by the department or the department's authorized agent] on any account maintained by the financial institution.[1]

2. If a financial institution agrees to provide the information according to the matched accounts method, the financial institution shall, within fifteen (15) days after submission to the financial institution by the department of an inquiry, file:
   a. Match the inquiry file of delinquent taxpayers and debtors identified and provided by the department, or by the department's authorized agent, against open accounts maintained by the financial institution; and
   b. Submit a report of matched accounts to the department or its authorized agent containing the name, record address, Social Security number, Federal Employer Identification number, and account status [and any other identifying information required by the department or the department's authorized agent] on any account maintained by the financial institution.[1]

(d) Maintain a security process to assure that information received from the department or its authorized agent concerning a delinquent taxpayer or debtor shall:
1. Be maintained and safeguarded as confidential; and
2. Not be copied or given to any other entity without the written permission of the department, or the delinquent taxpayer or debtor; and

(e) Incurred no liability for:
1. Disclosing a financial record to the department for the enforcement of a delinquent tax liability or debt of the account holder;
2. Embodying or surrendering an asset held by a financial institution in response to a Notice of Levy, Revenue Form 128020, incorporated by reference at 103 KAR 3:010(2)(1)(m), issued by the department, or any other action taken by a financial institution in good faith, or
3. Providing a file to the department [or its authorized agent] in accordance with an approved format as described by the Financial [Institution] Data Match Specifications Handbook.

Section 4. Levy. (1) If a financial data match occurs, a financial institution shall:
(2) Hold, encumber or surrender an account to the department upon receipt of a Notice of Levy, Revenue Form 128020, which is incorporated by reference in 103 KAR 3:010, Section 2(1)(m).
(3) Address and send to the department [or its authorized agent as designated] notices, paperwork, tapes or other electronic communication resulting from a financial institution data match program,
(4) Submit the data files required by Section 3 of this administrative regulation to the department [data files to the department or its authorized agent as designated],
(5) The match of an account holder to a delinquent taxpayer or debtor record provided by the department shall[does] not constitute a levy. An account shall not [and no account shall be] held, encumbered, or surrendered to the department without a financial institution having received a notice of levy from the department.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Data Matching Memorandum of Agreement", July 2008,

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, Division of Collections, 501 High Street, 6th Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: August 4, 2008
FILED WITH LRC: August 14, 2008 at 4 p.m.
CONTACT PERSON: LesAnna Applegate, Attorney, Division of Collections, P.O. Box 6222, Frankfort, Kentucky 40602, phone (502) 564-4921 ext. 4445, fax (502) 564-7348.

GENERAL GOVERNMENT CABINET
Kentucky Board of Barbersing
(As Amended at ARRS, November 12, 2008)

201 KAR 14:150. School records.

RELATES TO. KRS 317.410, 317.450, 317.540
STATUTORY AUTHORITY: KRS 317.430, 317.440(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: 317.440(1)(b)
requires the Kentucky Board of Barbering to promulgate administrative regulations to govern quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes requirements for school records.

Section 1. A monthly attendance record of the entire enrollment, including full-time and part-time students, instructors, and apprentice instructors shall [must] be kept by the schools and received [reported to] the board office not later than the tenth calendar day of each month.

(1) A barber school shall be held fully responsible for the completeness and accuracy of the attendance record, which shall show the total hours obtained for the previous month and the total accumulated hours to date for all students, instructors, and apprentice instructors.

(2) Only the hours recorded shall be submitted each month, and that report shall not be amended without proof or error and shall [must] be available for inspection at any time.

(3) A copy of the student's daily attendance record for the month of graduation through the date of the student's graduation shall be submitted with the student's certification of hours as part of the application for examination as an apprentice upon completion of the course.

Section 2. A copy of the monthly attendance record, as provided to the board office, shall be posted monthly on a bulletin board in the school so it is available at all times to the students, employees, board members, or agents of the board.

Section 3. (1) Barber schools shall [are] required to keep a record of a student's daily work [daily record], approved and signed by the instructor of each student's practical work, work performed on clinic patrons, and classroom work.

(2) [Attendance Records must be approved and signed by the instructor.] This record shall be included with the student's certification of hours and application for examination as an apprentice upon completion of the [the] course or with the certification of hours if a student withdraws or is dismissed from a school or upon the closure of a school and shall be available for inspection.

Section 4. (1) A detailed record shall be kept of all enrollments, withdrawals, dismissals, and graduations.

(2) Certification of hours completed, including a copy of the student's daily attendance record for the month of graduation through the date of a student's graduation, shall be forwarded with all records of a student's daily work [daily record], to the office of the board within ten (10) calendar days of a student's withdrawal, dismissal, or closure of the barber school.

Section 5. (1) All records shall be kept in a lockable file on the premises of the school and shall be available for inspection.

(2) The security of all records shall [shall be] the responsibility of the school.

(3) Records shall be locked if not in use or during nonbusiness hours.

This is to certify that the Kentucky Board of Barbering has reviewed and recommended this administrative regulation amendment prior to its adoption, as required by KRS 156.070(4).

NOEL EUGENE RECORD, Chair
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 12, 2008 at 8 a.m.
CONTACT PERSON: Karen Greenwell, Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149.

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(As Amended at ARRS, November 12, 2008)

201 KAR 18:072. Experience.

RELATES TO: KRS 322.040, 322.045, 322.047
STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.045(3), 322.047(2), 322.230(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040(4), 322.045(3), and 322.047(2) provides that the board shall promulgate administrative regulations to establish requirements for experience as required by KRS 322.040(1)(a), [consideration of experience gained prior to graduation from programs as described in the statute.] This administrative regulation establishes these requirements.

Section 1. Evaluation of experience in engineering required under KRS 322.040 shall consider the following:

(1) Experience shall reflect increasing complexity of the engineering tasks and the progressive responsibility of the applicant.

(2) The applicant shall demonstrate knowledge of engineering mathematics, physical and applied sciences, properties of materials, the fundamental principles of engineering design and the application of engineering principles in the solution of engineering problems.

(3) One (1) year of credit may be approved for completion of a master's degree in engineering in an EAC/ABET-accredited program, or one deemed equivalent by the board.

(4) Experience that violates KRS Chapter 322 shall not be approved.

(5) Engineering experience gained in the military services may be approved.

(6) Sales experience may be approved if engineering principles were required and used in that experience.

(7) Experience gained in teaching advanced-level engineering-related courses in a four (4) year EAC/ABET-accredited program, or one (1) deemed equivalent by the board, may be approved.

(8) Experience gained in engineering research and design projects by faculty in an EAC/ABET-accredited program, or one deemed equivalent by the board, may be approved.

(9) Experience may be approved for execution or supervision of construction projects designed by a professional engineer.

(10) The applicant shall demonstrate why experience not gained under the supervision of a professional engineer is eligible for credit.

(11) Qualifying experience shall be complete at the time of application for licensure.

(12) Qualifying experience required by KRS 322.040(1)(a) shall [must be] gained following graduation from the engineering program required by the provisions of KRS 322.040(1)(a).

Section 2. Evaluation of experience in land surveying required under KRS 322.045 and 322.047 shall consider the following:

(1) Land surveying experience shall reflect increasing complexity of the land surveying tasks and the progressive responsibility of the applicant.

(2) Experience shall include projects in which the applicant, while under the direct supervision of a practicing professional land surveyor, implemented work involving property conveyance and property boundary determination. The applicant shall also demonstrate experience in the fieldwork aspects of property boundary determination.

(3) One (1) year of experience may be approved for completion of a master's degree in land surveying from a board-approved program in land surveying from a college or university.

(4) A maximum of two (2) years of experience shall be approved for land surveying work prior to graduation under KRS 322.045(1)(c) 1, 2, 3, and 322.047(1)(c) 1 and 2.

(5) Experience that violates KRS Chapter 322 shall not be approved.

(6) Land surveying experience gained in the military services may be approved.
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(7) A maximum of two (2) years of experience may be approved for teaching land surveying courses at the postsecondary level.

(8) Qualifying experience shall be complete at the time of application.

(9) Notwithstanding subsections (3), (4), and (7), in no case shall an applicant’s experience gained after graduation be less than two (2) years.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: August 26, 2008
FILED WITH LRC: August 26, 2008 at 3 p.m.
CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET
Kentucky Board of Chiropractic Examiners
(As Amended at ARRS, November 12, 2008)

201 KAR 21:041. Licensing; standards/(renewals); fees.

RELATES TO: KRS 312.085, 312.095, 312.175, 312.145
STATUTORY AUTHORITY: KRS 312.010
MISCELLANEOUS, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application Fee. With the application submission, a nonrefundable application fee in the amount of $350 shall be paid to the board.

Section 2. Licenses. (1) Licenses issued by the board shall set forth the name of the issuing board, the name of the licensee, the number of the license, the date of the license issuance, and shall be signed by a majority of three (3) members of the board and have the seal of the board affixed.

(2) All members of the board shall be given the opportunity to sign each license.

Section 3. License Renewal. (1) (a) Each licensee of the board shall:

1. Annually renew his license on or before the first day of March; and
2. Submit his application for license renewal to the board on the forms provided by the board.

(b)1. With the application, a licensee seeking active status shall pay a renewal fee of $250.
2. An inactive licensee shall pay a renewal fee of seventy-five (75) dollars.

(c) The restoration fee for nonrenewal of a license in accordance with KRS 312.175(2)-(4) shall be $250.

(d)1. New licensees shall complete a two (2) hour jurisprudence course prior to their first license renewal.
2. Proof of attendance of at least twelve (12) hours of board approved continuing education shall be submitted with the renewal application.
3. The jurisprudence course shall account for two (2) of the twelve (12) hours of continuing education required for annual license renewal.

(2) The educational program shall meet one (1) or more of the following minimum requirements:

(a) A postgraduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education is the successful completion of at least twelve (12) hours of instruction, with a total of at least twelve (12) hours of instruction over at least two (2) days.
2. a. To be considered, the educational program shall be sponsored by a national or state approved organization of chiropractors open to all doctors of chiropractic in Kentucky who desire to attend.
3. The instructors and speakers shall be recognized to have a national reputation in the field of chiropractic education or allied sciences or they shall be generally recognized as having a high degree of skill in the field of instruction.
4. The programs to be presented shall contain subjects of significant benefit to licensees and on a postgraduate level of education.
5. Six (6) hours of the required twelve (12) hours for relicensure shall [must] be obtained within the state of Kentucky.
6. A maximum [then shall be a maximum] of eight (8) hours of continuing education hours may be obtained in one (1) day.

(3) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by providing the following information to the board:

(a) The name of the course;
(b) The name of the sponsoring organization;
(c) The objective of the program;
(d) The number of hours over which the educational program will be presented and the dates presented;
(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;
(f) The instructors’ or speakers’ educational background and other relevant qualifications; and
(g) The name and address of the person authorized to certify attendance.

(4) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board to determine compliance with subsection (3) of this section.

(5) (a) A proposed program shall be submitted to the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board’s approval or disapproval of the program to the sponsoring party not less than thirty (30) days after receiving the proposed educational program.

(c) Within thirty (30) days of completion of the program, the sponsoring party shall submit to the board a written certification of the licensees in attendance at the program, the sessions attended by each licensee, and the number of hours of each session attended.

(d) If the licensee is in active practice and is not in active practice in Kentucky and does not intend to practice in Kentucky during the renewal period, he shall meet the educational requirements of the state or jurisdiction in which he is practicing, shall affirm that the requirements have been met, and shall furnish proof of compliance if requested by the board.

(6) If the licensee is in active practice, his license may be renewed with the inactive status being noted, without satisfying the educational requirements, but before the license may again be licensed to engage in the active practice of chiropractic, he shall meet the educational requirements prescribed by the board after a review of the licensees’ verified summary of education and experience and shall satisfy the requirements of the educational program as may be prescribed by the board.

Section 4. Change of Address. Each licensee shall notify the board within ten (10) days of thirty (30) days of change of mailing address or place of business.

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

(a) "New Licensee Application", 2006;
(b) "Application for Annual License Renewal", 2006;
(c) "Annual Inactive/Non-Resident License Renewal Application", 2007; and
(d) "Application for Activation/Reinstatement of Kentucky Li-
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MARK WOODWARD, President
APPROVED BY AGENCY: September 8, 2008
FILED WITH LRC: September 15, 2008 at 8 a.m.
CONTACT PERSON: Kanisee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42412- phone (270) 651-2522, fax (270) 651-8784.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Authority
(As Amended at ARRS, November 12, 2008)

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

Section 1. (a) The Authority shall license all persons approved 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 not compete against an amateur.

2(c)(a) Participants shall apply for a license [passport through a licensed promoter] using the "Application for Amateur Mixed Martial Arts Contestant License."

2(c)(b) Applicants shall be mailed to the Authority by the promoter within twenty-four (24) hours of issuance.

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

(e) The fee for the amateur license [passport] shall be twenty-five (25) dollars.

(f) License renewal shall be ten (10) dollars.

(g) An amateur license [passport] shall expire on December 31 of the year in which the license [passport] is issued.

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

(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;

1. $300 up to ten (10) scheduled bouts;

2. $350 eleven (11) to fifteen (15) scheduled bouts; or

3. $400 over fifteen (15) scheduled bouts. [—$250].

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

(e) Assistant for mixed martial arts; seventy-five (75) dollars.

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

Section 4. (1) The promoter shall submit a request for a show date (no) less than thirty (30) calendar days before the requested date for approval by the Authority using the ["Amateur MMA Show Notice Form"] attachment. (2) There shall be no advertising of the event prior to approval.

Section 5. (a) The proposed program for a show shall be filed with the Authority at least twenty (20) business days prior to the date of the show. The Authority will review and determine if the program would benefit the public health and welfare.

(b) Notice of any change in a program or any substitutions in a program shall be filed immediately with the Authority.

(c) The program shall not have more than two (2) fifteen (15) minute intermissions.

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.

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

Section 7. (1) All shows shall be visibly recorded and retained by the promoter for one (1) year.

(2) Upon request of the authority, the promoter shall provide the visual recording of a show to the Authority. All shows shall be developed and retained by the promoter for one (1) year. Upon request of the Authority, the promoter shall provide the tape to the Authority during the time the tape is available.

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

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

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

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

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

Section 10. The ring shall meet the following requirements:
(1) All bouts shall be held in a four (4) sided roped ring with the
following specifications:
(a) The minimum size of the ring shall be 16 ft. x 16 ft., inside
the ropes;
(b) The floor of the ring shall extend beyond the ropes for a
distance of not less than one (1) foot,
(c) The floor of the ring shall be elevated not more than six (6)
feet above the arena floor; and
(d) The ring shall have steps to enter the ring on two (2) sides.
(2) The ring shall be formed of ropes with the following specifi-
cations:
(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 ma-
terial stretched tightly.
(5) A ring rope shall be attached to the ring posts by turn-
buckles that are padded with a soft vertical pad at least six (6)
inchs in width.
(6)(a) A promoter may request an alternate ring design, in-
cluding fenced area rings consisting of more than four (4) equal
sides, provided that the area inside is not less than 256 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 mar-
tial 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. a. The floor of the fenced area shall be padded with closed-
cell foam, at least a one (1) inch layer of foam padding,
with a top covering of a single canvas, duck, or similar material
orly stretched and laced to the platform of the fenced area.


5. The fencing used to enclose the fenced area shall be made
of a material that shall prevent a contestant from falling out of
the fenced area or breaking through the fenced area onto the floor
of the building or onto the spectators, and the fencing shall be coated
with vinyl or a similar covering to minimize injuries to a con-
testant.
6. Any metal portion of the fenced area shall be properly cov-
ered and padded and shall not be abrasive to the unarmed com-
tants.
7. The fenced area shall have at least one (1) entrance.
8. There shall not be a protrusion or obstruction [example:
foot] on any part of the fence surrounding the area in which the contestants are
compet[ing].

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

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

Section 13. A scale used for any weigh-in shall be approved in
advance by the authority 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) [Any] 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 stretch-
er, 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 rea-
son, 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 li-
censed by the authority at ringside before a bout shall be allowed
to begin, if [the] to begin.
(2) The physician shall have at ringside any medical supplies
necessary to provide first aid medical assistance for the type of
injuries reasonably anticipated to occur in a mixed martial arts
show.

Section 17. (1) A promoter shall provide insurance for the pro-
moter's[he] contest for [any] injuries sustained in the mixed
martial arts show.
(2) The minimum amount of coverage per contestant shall be
$5,000.00 health and $5,000.00 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 the notice shall be filed with the authority not less than two (2) business days before the show.

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

Section 20. Unless the Authority approves an exception:
(1) A nonchampionship contest or exhibition of mixed martial
arts shall not exceed three (3) five (5) rounds in duration;[1]
(2) A championship contest of mixed martial arts shall not exceed
five (5) rounds in duration;[1]
(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.[are
shown in Table A][

<table>
<thead>
<tr>
<th>CLASS</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flyweight</td>
<td>Up to 115 lbs</td>
</tr>
<tr>
<td>Lightweight</td>
<td>116 to 125 lbs</td>
</tr>
<tr>
<td>Super Lightweight</td>
<td>126 to 135 lbs</td>
</tr>
<tr>
<td>Welterweight</td>
<td>136 to 147 lbs</td>
</tr>
<tr>
<td>Middleweight</td>
<td>148 to 155 lbs</td>
</tr>
<tr>
<td>Super Middleweight</td>
<td>166 to 174 lbs</td>
</tr>
<tr>
<td>Light Heavyweight</td>
<td>175 to 189 lbs</td>
</tr>
<tr>
<td>Cruiserweight</td>
<td>190 to 204 lbs</td>
</tr>
<tr>
<td>Heavyweight</td>
<td>205 to 249 lbs</td>
</tr>
<tr>
<td>Super Heavyweight</td>
<td>Over 249 lbs</td>
</tr>
</tbody>
</table>

(2) After the weigh-in of a contestant competing in an amateur
mixed martial arts show:
(a) Weight gain (change in weight) in excess of six (6) (three (3))
pounds is not permitted for a contestant who weighed in at 145
pounds or less; and
(b) Weight gain (change in weight) in excess of eight (8) (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 (contestants shall
wear gloves that are a minimum of six (6) ounces and a maximum
of eight (8) ounces six (6) oz and a maximum of eight (8) oz).
(4) Both contestants shall wear the same glove
weight.size.

Section 23. The following shall be prohibited:
(1) *Battle royal* as defined in 201 KAR 27:005, Section 1(2); and
(2) Use of excessive grease or another (any-other) substance
that may handicap an opponent.

Section 24. (1) Any professional mixed martial arts contes-
tant found to be competing during an amateur mixed martial arts
show shall be suspended for a period not less than one (1) year.
(2) Any promoter 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 thoro-
ough 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[any-other
jurisdiction] may be allowed to participate in a[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 competi-
tion (physical-contact) for sixty (60) days;
(5) Any mixed martial arts contestant who has suffered a tech-
nical knockout (TKO) may, at the discretion of the inspector, be
prohibited from mixed martial arts competition (physical-contact) for
up to thirty (30) days. In determining how many days to prohibit
the contestant from mixed martial arts competition (physical-contact),
the inspector shall consider the nature and severity of the injuries
that resulted in the TKO.
(6) All contestants shall receive a mandatory seven (7) day
rest period from mixed martial arts competition after competing
in an event with a maximum of three (3) bouts within a twenty four
(24) hour period.
(b) 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 with-
out first submitting to a comprehensive physical performed by
a physician licensed by the Authority as a professional 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 pic-
ture identification. A contestant shall not assume or use the name
of another, and shall not change his ring name ex[ter]nally be
announced by g[any] 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 metal substance during a bout.
(2) The belt shall not extend above the waistline of the contest-
tant.

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

Section 31. (1) The Authority may request that[at-any-time] a
contestant submit to a drug screen for controlled substances at the contestant’s expense.

(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the Authority, the Authority shall impose a fine upon the contestant, or both.

Section 32. (1) Any contestant who has made a commitment to participate in an amateur mixed martial arts show and is unable to participate, for any reason, shall notify the promoter of the inability to participate no less than seven (7) days prior to the event.

(2) If the promoter fail to notify the Authority, the Authority shall impose a fine upon the promoter.

Section 33. Any mixed martial arts promoter, official, or contestant whose license is suspended or revoked due to disciplinary actions shall be prohibited from attending all mixed martial arts events sanctioned by the Authority during the term of the suspension or revocation.

Section 34. Method of Judging (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:

(a) The better contestant of a round receives ten (10) points and the other receives zero (0) points.

(b) If the round is even, each contestant receives ten (10) points.

(c) A [N]eutral 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 a tie, the decision shall be a[tie].

(4) After the authority's representative has checked the scores, the representative shall inform the authority of the decision.

(5) [When] the Authority's representative has checked the scores, he shall inform the decision. The announcer shall then inform the audience of the decision over the speaker system.

(6) Unjudged exhibitions may be permitted with the prior approval of the Authority.

Section 35. The following moves are prohibited in amateur mixed martial arts shows:

(1) Elbow strikes to the head shall not be allowed at any time.

(2) Kneeling to the head shall be permitted but shall be permitted, but may only be used and delivered from a standing position.

Section 36. The following acts constitute fouls in mixed martial arts:

(1) Butting with the head;

(2) Eye gouging of any kind;

(3) Biting;

(4) Hair pulling;

(5) Fishhooking;

(6) Groin attacks of any kind;

(7) Putting a finger into any orifice or into any cut or laceration on any part of the body;

(8) Small joint manipulation;

(9) Stoking to the spine or the back of the head;

(10) Striking downward using the point of the elbow;

(11) Thrust strikes of any kind, including grabbing the trachea;

(12) Clawing, pinching, or twisting the opponent's flesh;

(13) Grabbing the clavicle;

(14) Kneeling the head of a grounded opponent;

(15) Kneeling the head of a grounded opponent.

(16) Stomping the head of a grounded opponent;

(17) Kicking to the kidney with the heel;

(18) Spiking an opponent to the canvas on his head or neck;

(19) Throwing an opponent out of the ring or fenced area;

(20) Holding the shorts of an opponent;

(21) Spitting at an opponent;

(22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent;

(23) Taking the ropes or the fence;

(24) Using abusive language in the ring or fenced area;

(25) Attacking an opponent on or during the break;

(26) Attacking an opponent who is under the care of the referee;

(27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;

(28) Flagrantly Disregarding the Instructions of the referee;

(29) Throwing, including avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or taking an injury;

(30) Interference by the corner;

(31) The throwing of a contestant's corner staff of objects into the ring during competition.

Section 37. (1)(a) If 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 severity of the foul, regardless of whether or not the foul was intentional.

(b) The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.

(c) The referee determines that it is necessary to deduct a point or points because of a foul, the referee shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(4) [Any] point or points to be deducted for [Any] foul shall be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

Section 38. (1)(a) If a bout of amateur mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the contestant who has been fouled is able to continue or not.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the Authority's representative of [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 a result of an accidental foul, the bout shall be declared a "no contest" if the foul occurs during:

(a) The first two (2) rounds of a bout that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout that is scheduled for 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 completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout that is scheduled for 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.

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GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Private Investigators
(As Amended at ARRS, November 12, 2008)

201 KAR 41:020. Application for licensure.

REQUIRES TO: KRS Chapter 61, 329A.035, 329A.040(1),
329A.045(1), 28 C.F.R. 16.3345, 164.512(e), (d), (e) [329A.035,
329A.040(1)]

STATUTORY AUTHORITY: KRS 329A.025(1), 329A.035,
[329A.044(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS
329A.025(1) requires the Kentucky State Board of Licensure for
Private Investigators to evaluate the qualification of candidates for
licensure as private investigators and private investigation com-
panies. KRS 329A.035 establishes application requirements for pri-
vate investigators and private investigation companies. This
administrative regulation establishes the application requirements and
process for licensure.

Section 1. Application for Individual Private Investigator Li-
cense. (1) A person who has met the qualifications established in
KRS 329A.035 may submit to the board the [P]Private Investigator
Application and Applicant Instructions.

(2) With a sworn and notarized [he] application, the applicant
shall submit to the board:
(a) The initial application fee established [set-forth] in 201
KAR 41:040, Section 1, which shall be [x] nonrefundable;
(b) Two (2) 2 in. x 2 in. color passport-style photographs,
(c) A check or money order made payable to the "Kentucky
State Treasurer" in the amount of twenty-nine (29) dollars and
twenty-five (25) cents [thirty-four (34) dollars] for the criminal
criminal back- ground check and fingerprint fee; and
(d) Authorization [waiver] for release of medi-
cal, psychological, and, if applicable, [other] records pursuant to
the requirements of KRS 329A.035(3)(e)-(h).

(e) The applicant shall contact the Division of Occupations
and Professions for the combined amount of state and federal
fees, pursuant to 502 KAR 30:060 and 28 C.F.R. 16.33.

Section 2. Application for Company Private Investigator Li-
cense. (1) Owners, partners, or qualifying agents of companies
who have met the qualifications established in KRS 329A.035, may
submit the [P]Private Investigator Company Application and Applicant
Instructions.

(2) With the application sworn by the individual applicant,
each partner, if the applicant is a partnership, or the qualifying
agents, and notarized [company-application], the applicant shall
submit:
(a) The initial application fee established [set-forth] in 201
KAR 41:040, Section 2, which shall be [x] nonrefundable; and
(b) A check or money order made payable to the "Kentucky
State Treasurer" in the amount of twenty-nine (29) dollars and
twenty-five (25) cents [thirty-four (34) dollars] for the criminal
criminal back- ground check and fingerprint fee.

(c) A list of all private investigators employed by the com-
pa ny and a "proof of affiliation" letter for each private investigat-

(d) The applicant shall contact the Division of Occupations
and Professions for the combined amount of state and federal
fees, pursuant to 502 KAR 30:060 and 28 C.F.R. 16.33.

Section 3. Status Change. (1) A licensee, applicant, or pri-
ivate investigation company shall notify the board in writing
within thirty (30) days of a change in company affiliation, busi-
bness address, residence address, or phone number during
the application process and after license issuance.

(2)(a) A private investigation company shall notify the board in writing within thirty (30) days of a change in company affiliation or upon the death or termination of a private inves-
tigator working for that company.

(b) If a private investigator’s employment is terminated, the private investigation company shall state within
Section 4. Application Processing. (1) The average processing time for an application is two (2) to three (3) months.
(2) Failure to respond to correspondence during the application processing period may delay the application.
(3)(a) An application on file with the board for more than six (6) months shall be placed in "inactive status".
(b) If a license is sought for an application in "inactive status", a new application and fee shall be required.
(4) Licenses fees not paid within thirty (30) days of the request or application shall result in closure of the application without further notice.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Private Investigator Application and Applicant Instructions", 10/2008[7/2008][8/2006] edition; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 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 Licensure for Private Investigators 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 Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 329A.

RICK A HESSIG, Chair
APPROVED BY AGENCY: May 1, 2008
FILED WITH LRC: July 30, 2008 at 3 p.m.
CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-2296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Private Investigators
(As Amended at ARHS, November 12, 2006)

201 KAR 41:040. Fees.

STATUTORY AUTHORITY: KRS 329A 025(2)(b), 329A.040(1)(b), 329A.045(4)

NECESSARY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(b) requires the board to establish fees associated with the licensure of private investigators and private investigating companies. 329A.040(1)(b) requires the board to establish an application fee for licensure and for state criminal history background checks. KRS 329A.045(4) requires the board to establish a license renewal fee. This administrative regulation establishes the application and related fees, the licensure renewal fees, and the fee procedures for the licensure examination.

Section 1. Application Fees for Licensure as a Private Investigator. An applicant for licensure as a private investigator shall submit the following fees to the board:
(1)(a) The initial application fee for licensure as a private investigator shall be $400(500).
(b) The fee shall be submitted to the board as follows:
1.1(a) $100 at the time of application; and
2.1(b) $300 after $400 [when the application has been reviewed and approved by the board; end].
(2)(a) The fee for the criminal history, background check, and fingerprinting shall be remitted to the Kentucky State Treasurer in an amount pursuant to 502 KAR 30:060 and 28 C.F.R. 16.33.
(b) Contact the Division of Occupations and Professions for fee amount or check the board's Web site at http://finance.ky.gov/regulations/kar/329a/privinvestor:
   - Twenty-one (21) [Thirty-four (34)] dollars and twenty-five (25) cents; and
   - Submitted at the time of application.

Section 2. Application Fees for Licensure as a Private Investigator Company. (1) The initial application fee for licensure as a private investigator company shall be:
(a) $100 for a sole proprietorship; or
(b) $400(560) for a firm, association, partnership, corporation, nonprofit organization, or institution.
(2) The initial application fee shall be submitted at the time of application.

Section 3. Examination Fee. (1) The examination fee shall be the actual amount charged by the examination service for the examination pursuant to a contractual agreement with the board.
(2) The examination fee shall be paid directly to the examination service.

Section 4. Biennial Renewal License Fee. (1) The fee for renewal of a private investigator license shall be $250.
(2) The fee for renewal of a private investigator company license shall be $250.

Section 5. Late Renewal Fee. (1)(a) The fee for late renewal of a private investigator license, submitted for renewal between July 1 and August 31, shall be $250.
(b) The late renewal fee shall be in addition to the license renewal fee established for forth in Section 4(1) of this administrative regulation[above] for a total of $500.
(2)(a) The fee for late renewal of a private investigator company license, submitted for renewal between July 1 and August 31, shall be $550.
(b) The late renewal fee shall be in addition to the license renewal fee established for forth in Section 4(2) of this administrative regulation[above] for a total of $550.

Section 6. Reinstatement Fee. (1)(a) The fee for reinstatement of a private investigator's license terminated pursuant to KRS 329A.045(8) shall be $100.
(b) The reinstatement fee shall be in addition to the license renewal fee established for forth in Section 4(1) of this administrative regulation[above] and the late renewal fee established for forth in Section 5(1) of this administrative regulation[above] for a total of $500.
(2)(a) The fee for reinstatement of a private investigator company license terminated pursuant to KHS 329A.045(8) shall be $100.
(b) The reinstatement fee shall be in addition to the license renewal fee established for forth in Section 4(2) of this administrative regulation[above] and the late renewal fee established for forth in Section 5(2) of this administrative regulation[above] for a total of $500.

Section 7. Inactive Status Fee. (1) The fee for placing a license in inactive status shall be $100.
(2) The fee for renewal of a license in inactive status shall be $100.
(3) The fee to reactivate an inactive license shall be $250.

Section 8. Duplicate License Fee. The fee for a duplicate license or certificate shall be twenty-five (25) dollars.

Section 9. Continuing Education Program Application Fee. (1) The annual fee for an application for approval of a continuing education program shall be fifty (50) dollars.
(2) The fee shall be [said fee is] applicable to all continuing education providers, except those who do not require board approval pursuant to 201 KAR 41:070, Section 3(1).
This is to certify that the Chair of the Kentucky Board of License for Private Investigators 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 329A.

RICK A. HESSIG, Chair
APPROVED BY AGENCY: May 1, 2008
FILED WITH LRC: July 30, 2008 at 3 p.m.
CONTACT PERSON: Gerad Hopppmann, Director, Kentucky Board of License for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3298, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of License for Private Investigators
(As Amended at ARRS, November 12, 2008)

201 KAR 41:060. Renewal and reinstatement procedures.

RELATES TO: KRS 164.772 [329A.026(3)(e)], 329A.045(1)-(3), (8), (11)
STATUTORY AUTHORITY: KRS 329A.025(2)(a), (3)(e) [329A.045(4)(a)-(6)], 444(l)
NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) states that the board may renew licenses. KRS 329A.025(2)(a) requires the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations [in accordance with the provisions of KRS Chapter 13A]. This administrative regulation provides direction for the biennial renewal of these licenses.

Section 1. An Individual private investigator license shall for may be renewed upon:
(1) Payment of the biennial renewal fee established in Section 4(1); and
(2) Submission of a completed PI Individual License Renewal Form[] with the following written information to the board:
(a) Documentation of completion of continuing professional education requirements during the license renewal period established in 201 KAR 41:070;
(b) Written confirmation that, since the license was issued or renewed, the licensee has not:
1. Committed a felony;
2. Had the license disciplined and is not currently under disciplinary review in Kentucky or another state; or
3. Deferred on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772 or on the repayment obligation of financial aid programs administered by any other state or federal agency; and
(c) Documentation of proof of continuous insurance coverage for the entire licensure period.
2. Copies of the certificate of liability insurance shall be submitted with the renewal application.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of conviction or discipline along with a written explanation to the board prior to license renewal.

Section 3. If payment and complete information are not received by the board on or before September 1 of the renewal year, the license shall terminate and the person shall not work as a private investigator in Kentucky.

Section 4. Company License Renewal. Private investigation companies who want to renew their licenses shall submit a completed PI Company License Renewal Form[] and comply with the provisions of KRS 329A.045(3).

Section 5. A terminated license shall be reinstated, if the applicant submits:
(1) A completed [a] Application for Reinstatement of License, form within five (5) years of the termination date;
(2)(a) [a] Submit Evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement is requested, or
(b) Evidence of receiving ( obtain) six (6) hours of continuing education within the first six (6) months of reinstatement of licensure.
2. Failure to obtain six (6) hours within six (6) months shall result in termination of licensure.
3. This requirement is in addition to the continuing education requirements for licensure renewal established in Section 4(1), in 201 KAR 41:070; and
3. Payment of renewal and reinstatement fees set forth in 201 KAR 41:040.

Section 6. A license previously revoked as a disciplinary action shall be considered for reinstatement as follows:
(1) An applicant for reinstatement shall:
(a) Submit to the board fifteen (15) days prior to the next scheduled meeting, a letter:
1. Requesting reinstatement; and
2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of the board, if applicable;
(b) Meet the requirements established in Section 5(2) of this administrative regulation; and
(c) Pay the renewal and reinstatement fees established in 201 KAR 41:040.
(2) Upon receipt of an Application for Reinstatement of License, the board shall:
(a) Review the request for reinstatement and the Final Order;
(b) Affirm or deny the request; or
(c) Issue a written corrective or remedial education, training, or review required before reinstatement be granted.
(3) The board shall not consider a request for reinstatement submitted to the board prior to the end of a revocation period.

Section 7. (1) An applicant whose request for reinstatement is denied may file a written request for a hearing before the board within thirty (30) days of the letter denying reinstatement.
(2) A hearing held pursuant to the provisions of this section shall be conducted in accordance with KRS Chapter 13B.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "[PI Company License Renewal Form", [2006][2006] Edition]; and
(b) "PI Individual License Renewal Form", 2008 Edition;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of License for Private Investigators, 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 License for Private Investigators 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 329A.

RICK A. HESSIG, Chair
APPROVED BY AGENCY: May 1, 2008
FILED WITH LRC: July 30, 2008 at 3 p.m.
CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of License for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3298, ext. 224, fax...
VOLUME 35, NUMBER 6 – DECEMBER 1, 2008

(502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Private Investigators
(As Amended at ARRS, November 12, 2008)

201 KAR 41:065. Inactive status.


STATUTORY AUTHORITY: KRS 329A.025(3)(e), 329A.045(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(3)(e) authorizes the board to renew licenses and consider requiring continuing education as a condition for renewal. KRS 329A.045[12] authorizes[states that] a valid license may be put on inactive status by the licensee at the time of renewal at a cost to KRS 329A.045[10]. The board. This administrative regulation establishes[sets forth] the requirements for inactive licensure status, [and reference the appropriate sections of the administrative register regarding] fee payment, and continuing education [requirements].

Section 1. Inactive licensure status shall[may] be granted to a licensee upon written request to the board at the time of renewal. In accordance with KRS 329A.045[12] and upon completion of the Renewal Application Form as referenced in 201 KAR 41:060.

(1) A licensee who is placed on inactive status shall not advertise[t] or perform any of the duties established in KRS 329A.010[4] or hold himself out as a private investigator in violation of KRS 329A.015.

(2) An inactive licensee shall not display [refrain from displaying] the license during the period of inactive licensure.

(3) The identification card shall be returned to the board office within ten (10) days of acknowledgement of inactive status by the board.

(4)(a) Violation of the inactive status shall[would] subject the licensee to the penalties associated with KRS 329A.080[12] and

(b) In addition[Additionally], The licensee could be subject to action pursuant to KRS 329A.045[10].

(5)(4) The licensee shall pay the fee for placing the license in inactive status established[set forth] in 201 KAR 41:040, Section 7.

(6)(5) The licensee shall be required to meet the requirements for continuing education as established[set forth] in 201 KAR 41:070, Section 10.

(7) The inactive licensee shall be required to either affirm the inactive status or request a return to active licensure each renewal cycle.

Section 2. The licensee may return to active status upon

(1) Written notification to the board;

(2) Payment of the fee established[set forth] in 201 KAR 41:040, Section 7.


This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators 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 329A.

RICK A. HESSIG, Chair
APPROVED BY AGENCY: May 1, 2008
FILED WITH LRC: July 30, 2008
CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Private Investigators
(As Amended at ARRS, November 12, 2008)

201 KAR 41:070. Continuing professional education requirements.

RELATES TO: KRS 329A.025(3)(e), 329A.045(11)

STATUTORY AUTHORITY: KRS 329A.025(2)(a),(3)(e), 329A.045(11)

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) authorizes the board to require[the board may] renew licenses and require continuing professional education as a condition for renewal. KRS 329A.025(2)[a] authorizes the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations[in accordance with the provisions of KRS Chapter 13A]. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Approved" means recognized by the Kentucky Board of Licensure for Private Investigators.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing professional education experience.

(3) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

(4) "Provider" means an organization approved by the Kentucky Board of Licensure for Private Investigators for providing continuing professional education programs.

Section 2. Accrual of Continuing Education Hours; Computation of Compliance. (1) A minimum of twelve (12) continuing education hours shall be accrued by each person holding licensure during the two (2) year licensure period for renewal.[Six (6) hours shall be accrued each year of the licensure period.]

(2) All hours shall be in or related to the field of private investigation.

Section 3. Methods of Acquiring Continuing Education Hours. (1) Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a licensed private investigator.

(2) They shall[may] be earned by completing any of the following educational activities:

(a) Programs not requiring board review and approval. A program provided or approved or sponsored by any of the following providers[who submit prior application to the board] shall be deemed to be relevant to the practice of private investigation and shall be approved without further review by the board:

1.[(a) Kentucky Private Investigators Association (KPIA);]

2.[(b) Kentucky Society of Professional Investigators (KSPI);

3.[(c) Association of Certified Fraud Examiners;

4.[(d) Association One;

5.[(e) National Fire [or] Arson Certification Associations; and]

6.[(f) State and local bar associations; and]

7.[(g) Continuing education programs approved by other state licensure boards;]

8.[(g) A general education course, or elective[e] designated to meet undergraduate or postgraduate degree requirements, shall be acceptable for continuing education credit if the board determines it to be relevant to the field of private investigation;

Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling twelve (12) continuing education hours; and

9.[(h) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it complies with the requirements of Section (2) of this administrative regulation;]
1. (a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (1) of this section;

2. (b) A program or academic course presented by the licensee;

3. (c) A relevant publication in a professionally recognized or juried publication.

Continuing education hours shall be granted for relevant publications subject to review and approval by the board as follows:

4. Five (5) continuing education hours for each published abstract or book review;

5. Ten (10) continuing education hours for each published article;

6. Twenty (20) continuing education hours for each book chapter or monograph;

7. Forty (40) continuing education hours for each published book.

Section 4. Procedures for Preapproval of Continuing Education Programs and Projects. (1) A continuing education program or project shall be submitted to the board at least sixty (60) days in advance of the commencement of the program and shall provide the information required in Section 5 of this administrative regulation.

(2) An approved program file shall be held as established.[not found in 201 KAR 51:040, Section 3].

(2) A continuing education activity shall be qualified for approval if the board determines the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter related to the profession;

(c) Enhances the professional competence of the licensee by:

1. Refreshing the licensee’s knowledge and skills; or

2. Educating on a new topic or subject; and

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

Section 5. Procedures for Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board in the continuing education provider.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education, coffee, and lunch breaks;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college;

(f) Application for continuing education credits approved;

(g) Approval will be for one (1) year from date of approval unless substantial course change occurs. For purposes of this section, substantial change means a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Licensees. (1)(a) During the license renewal period, the board shall require up to fifteen (15) percent of all licensees to furnish documentation of the completion of the appropriate number of continuing education hours.

(b) All copies of documentation submitted to the board shall be returned to the licensee upon completion of the audit process via regular U.S. mail, first class, postage prepaid.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

2. A licensee shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify continuing education needs and seek activities that meet those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity[and];

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity and;

(h) If applicable, a licensee may submit information from a continuing education course that has not been preapproved by providing to the board for review the information specified in Section 3 of this administrative regulation above the board for review.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) [Comply with the provisions of this administrative regulation. Failure to comply with the provisions of this administrative regulation shall constitute a violation of KRS Chapter 329A and shall result in:

(a) Refusal to renew license;

(b) Suspension of license; or

(c) Revocation of license.

Section 7. Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following licensure renewal period.

Section 8. [Board to Approve Continuing Education Hours. Appeal of Denial of Continuing Education Hours.] On application for approval of continuing education hours denied, the licensee shall have the right to appeal the board’s decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extension of Continuing Education. (1) On application, the board may grant a waiver or extension of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member;

(c) Death or serious injury of an immediate family member; or

(d) Active military duty.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the licensee; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.
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Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit:

(a) Submit evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement or reactivation is requested;
(b) Obtain six (6) hours of continuing education within the first six (6) months of reinstatement of licensure. Failure to obtain six (6) hours within six (6) months shall result in termination of licensure. This requirement is in addition to the continuing education requirements for licensure renewal set forth in Section 2 of this administrative regulation above.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11. The requirements of this administrative regulation shall go into effect for the 2008 licensure renewal cycle. All private investigators licensed by December 2006 shall be required to provide proof of continuing education for the 2008 renewal cycle. Proof of continuing education shall be required for all licensure cycles beginning in 2008.

[Section 12–Incorporation by Reference–(1) The following material is incorporated by reference:
(a) "Application for Approval for Providers to Offer Continuing Education,", (2008)[2006] Edition; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, by the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m.]

This is to certify that the Chair of the Kentucky Board of Licensure for Private Investigators 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 329A.

RICK A. HESSIG, Chair
APPROVED BY AGENCY: May 1, 2006
FILED WITH LRD: July 30, 2006 at 3 p.m.
CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Licensure of Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, ext. 224; fax (502) 564-4818.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, November 12, 2008)

202 KAR 7:030. Fees of the board.

RELATES TO: KRS 311A.145
STATUTORY AUTHORITY: KRS 311A.145
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.145 authorizes the board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation establishes those fees.

Section 1. The skills evaluation/Examination fee shall be fifty ($50) dollars. This fee shall be required of students from all disciplines, which includes the written examination. A retesting fee shall be fifty ($50) dollars.

Section 2. EMS-TEI. (1) EMS-TEI Application fee shall be $500. This fee includes the licensing fee for the initial five (5) year period ($250).
(2) EMS-TEI Renewal licensing fee Application Five year–(5) year review shall be $500 which shall be valid for subsequent five (5) years-
(3) In addition to the licensing fee, an EMS-TEI shall remit an additional fee for each course taught which has the potential to lead to state or national certification or licensure as follows:
(a) Emergency Medical First Responder or First Responder - Fifty (50) dollars;
(b) Emergency Medical Technician or EMT Basic - Seventy Five (75) dollars;
(c) Emergency Medical Technician Advanced - $150; and
(d) Paramedic - $200 EMS-TA initial application fee - $260. This fee shall apply to entities making application to function as a free-standing EMS-TA. An EMS-TEI shall not be required to pay the EMS-TA fee to serve as an EMS-TA if their certification as an EMS-TEI remains in effect.
(4) EMS-TA application renewal fee - $260.

Section 3. Issuance of Certificates and Licenses [Including Reciprocity]. (1) The certificate or license of EMS Instructor application fee shall be ten (10) dollars.
(2) First responder initial certification fee shall be fifteen (15) dollars.
(3) EMT initial certification fee shall be thirty (30) dollars.
(4) Advanced EMT initial certification fee shall be fifty (50) dollars.
(5) Paramedic initial licensure fee shall be sixty-five (65) dollars.
(6) EMS instructor initial certification fee shall be eightty-five (85) dollars.
(7) Level II EMS instructor initial certification fee shall be eighty-five (85) dollars.

Section 4. Recertification and Relicensure. (1) First responder recertification fee shall be fifteen (15) dollars.
(2) EMT recertification fee shall be twenty-five (25) dollars.
(3) Advanced EMT recertification fee shall be forty (40) dollars.
(4) Paramedic recertification fee shall be fifty (50) dollars.
(5) Level III (4) EMS instructor recertification fee shall be ninety (90) dollars.
(6) Level I and II EMS instructors recertification fee shall be seventy-five (75) dollars.
(7) The recertification fee for an individual recertifying as a Level I, II and III EMS instructor shall be one hundred fifty (150) dollars.

Section 5. Application for reciprocity or for a temporary certificate for all levels shall include [be] a fee of $125. This fee shall be [be] in addition to the application fee and initial certification fee for each level (seventy-five (75) dollars).

(2) Transfer of license fee shall be $1,500.(5,000) dollars.
(3) If additional units required for inspection in excess of the five (5) units noted in subsection (2) of this section, and which are located at the same location shall be inspected for a fee of thirty (30) dollars.
(4) Relicensure fee for up to, and including, the inspection of five (5) licensed units shall be $500.(260).
(5) Relicensing required as a result of the cited deficiencies. Relicensing inspection due to major deficiency shall be a fee of $100 per cited deficiency. The maximum penalty shall not exceed the sum of $500.
(6) Inspection of additional or replacement units for an existing license addition or replacement of units to existing license if inspected at the provider's site shall be a fee of $150.(100) per unit and if inspected at the inspector's site shall be a fee of $100 per unit (fifty-five (50) dollars).

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Section 7. Administrative Fees. (1) Late fee shall be fifty ($50) twenty-five ($25) dollars for any recertification or relicensure applicant or any official document required to be received by the KBEMS office, which is postmarked after the due date or expiration date.
(2) Duplicate card, certification, or license fee for each shall be twenty-five ($25) dollars.
(3) Application for reinstatement for all levels [fee] shall be a fee of $150. This fee is in addition to the application fee and initial certification fee for each level.[twenty-five ($25) dollars]

Section 8. ALS Medical First Response Providers. (1) Initial license fee to establish compliance with 202 KAR 7:501 shall be $200.
(2) Reinspection inspection up to four (4) vehicles shall be a fee of $200[400] dollars.
(3) Each additional unit for inspection shall be a fee of thirty ($30) twenty-five ($25) dollars.

Section 9. Air Ambulance Service Licensing and Reinspection. (1) Initial relicensing fee, to establish compliance with 202 KAR 7:510, shall be $5,000.
(2) Transfer of license fee shall be $2,500.
(3) Reinspection fee for up to, and not including, the inspection of five (5) licensed aircraft shall be [a fee of] $1,000.
(4) Reinspection required as the result of a cited deficiency shall be a fee of $500 per cited deficiency. The maximum penalty shall not exceed $5,500.
(5) Inspection of additional or replacement units for an existing license shall be a fee of $250 per unit and shall be inspected at the provider's site.

ROB ROTHENBURGER, Chairman
APPROVED BY AGENCY: September 12, 2008
FILED WITH LRS: September 12, 2008 at 1 p.m.
CONTACT PERSON: Lee W. Rowland, Esq., Legal Counsel,
Kentucky Board of Emergency Medical Services, 300 N Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARFS, November 12, 2008)

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

RELATES TO: KRS 150.010, 150.025(1), 150.120, 150.170, 150.175, 150.235, 150.360, 150.370, 150.440, 150.445, 150.620, 150.900

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, EO 2008-516

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations pertaining to the taking of [traditional] methods-of-take] fish. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet. This administrative regulation establishes the procedures for taking sport and rough[ underway spearing, and "scuba diving"[1] sport fishing trotlines, jigging and setting, the taking of rough fish from backwaters, gigging and[1], grabbing[1] or snapping, ticking and noodling (hand grabbing), and bow fishing. [EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.]

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full draw without aid from the archer.
(2) "Bowfishing"[Bow-fishing] means shooting rough fish with an arrow equipped with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.
(3) Closed waters. [A] Sport fishing trolling[trawling], jugs, or setlines shall not be used in the following waters:
(a) In the Tennessee River within 700 yards of Kentucky Dam[;]
(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge[;]
(c) In any lake less than 500 surface acres owned or managed by the department, except:
1. Ballard Wildlife Management Area Lakes, Ballard County[;]
2. Peal Wildlife Management Area Lakes, Ballard County[;]
3. Swan Lakes Wildlife Management Area Lakes, Ballard County[;] (areas specifically listed in subsection (3)(e) of this section)
(d) In the following areas of the Ohio River:
1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall[;]
2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike[;]
3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall[;]
4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall[;]
5. McAlpine Dam downstream to the K&I railroad bridge[;]
6. Markland Lock and Dam to a line perpendicular to the end of the outer lock wall[;]
7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall[;]
8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall[;][e] A sport-fishing trawling, jug, or setline shall not be permitted in lakes under 500 surface acres owned or managed by the department, except the following:
1. Ballard Wildlife Management Area Lakes, Ballard County[;]
2. Peal Wildlife Management Area Lakes, Ballard County[;]
3. Swan Lakes Wildlife Management Area Lakes, Ballard County[;]
4. All persons engaged in this type of fishing shall have a fishing license[;]

Section 6. (5) Gigging and/or (6) Grabbing or (7) Snagging, (8) Trolling, and (9) Noodling. (1) Season and methods of gigging and snagging.
(a) Gigging and snagging shall be[re] permitted February 1 through May 10, except as provided in subsection (3)(c) of this section.
(b) A person may gig or snap from the bank of a stream or lake, but shall not gig or snap from a boat or platform, except that gigging shall be[re] permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.
(c) Persons may gig rough fish through the ice if the surface is frozen thick enough to stand on, and the gigger shall gig while supported by the ice.
(2) Snagging equipment.
(a) A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.
(b) The rod shall be equipped with line, guides, and a reel.
(c) Fish may be taken by snagging using one (1) single or double hook attached to the line except in the Green River and its tributaries and the Rolling Fork River and its tributaries, where five (5) hooks, either single or treble may be used.
(3) Areas open to gigging and snagging.
(a) Gigging or snagging for rough fish shall be[re] permitted Monday through Friday in lakes and streams, except as prohibited by subsection (1) of this section and paragraph (b) and (c) of this subsection (where prohibited in subsections (4), (5), and (6) of this section).
(b) Gigging and snagging shall be[re] specifically prohibited in the following lakes, streams, and their tributaries:
1. The Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and in the Cumberland River in the area below Barkley Lake Dam downstream to US 62 bridge[;]
2. The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Berea County line in Perry County[;]
3. The Rough River, below Rough River Lake Dam downstream to Highway 54 Bridge in Breckinridge and Grayson Counties[;]
4. Cave Run Lake[;]
5. Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River; and
6. Within 200 yards of any dam on any stream, except as specified in paragraph (c) of this subsection (where prohibited) pertaining to the Tennessee River below Kentucky Lake Dam.

Section 7. Gigging is prohibited in the Tennessee River from Kentucky Lake Dam downstream to its confluence with the Ohio River.
(c) Rough Fish may be taken only by snagging in the Tennessee River below Kentucky Lake Dam; gigging shall be prohibited.
1. Snagging shall be[re] permitted in the Tennessee River below the Kentucky Lake Dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31[;]
2. From June 1 through December 31, snagging shall only be[re] permitted from sunrise to sunset (local time) between the Kentucky Lake Dam and the new US 62 Bridge.
4. Snagging shall be[re] permitted year round in the Tennessee River from the L-24 Bridge to its confluence with the Ohio River.

Section 8. Snagging shall not be[re] permitted under the US 62 bridge, the P&L Railroad bridge, or from the fishing piers located below the new US 62 Bridge[;]
(4) Creel limits.
(a) The state-wide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Lake Dam and in the Cumberland River below Barkley Lake Dam as established in paragraphs (b) and (c) of this subsection shall be four (4) pieces.

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section 41 Unlimited except that only two (2) paddlefish may be taken daily statewide.

1. All eelgrass or snared paddlefish, in all areas open to eelgras- ning and snaring, shall be taken into immediate possession and shall not be released or sold.

2. Any daily limit of paddlefish has been reached, all snaring shall cease.

3. All fish that are eelgras or snared shall be open to eelgras- ning or snaring, except in the Kentucky River below Kentucky Dam as established in paragraph (a) of this section; shall be returned to the water, regardless of condition.

(b) The daily eelgrass and snaring limit for rough fish in the Cumberland River below Barkley Dam shall be de (8) fish, including paddlefish.

1. All rough fish, including paddlefish, shall be taken into immediate possession (no cut), except for first or second.

2. All sport fish that are eelgras or snared shall be immediately returned to the water, regardless of condition.

(c) The daily limit for fish in the Tennessee River below Ken- tucky Lake Dam that are open to only snaring shall be a maximum of eight (8) fish, including paddlefish.

1. All fish snared, including paddlefish and sport fish, shall be taken into immediate possession (no cut), except for first or second.

2. Snaring shall cease if a daily limit of sport fish has been obtained, even if the limit for that sport fish is less than eight (8).

Section 7. Tickling and Noodling (Hand Grabbing) (1) The fish may be taken by tickling and noodling with a single hook or one (1) treble hook except as provided in subsection (2) of this section.

2. In the Green River and its tributaries and the Rolling Fork River and its tributaries, five (5) hooks, either single or treble hook, may be used.

3. Methods of eelgrass and snaring—(a) Person may tie on from 5 to 20 feet, except that eelgrass is permitted to take a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

4. Seasons. Eelgrass and snaring are permitted February 1 through May 30, except as provided in subsection (2) of this section.

5. Eelgrass tickling and noodling are permitted February 1 through May 30, except as provided in subsection (2) of this section.

6. Eelgrass tickling and noodling are permitted February 1 through May 30, except as provided in subsection (2) of this section.

7. Eelgrass tickling and noodling are permitted February 1 through May 30, except as provided in subsection (2) of this section.

8. Eelgrass tickling and noodling are permitted February 1 through May 30, except as provided in subsection (2) of this section.

9. Eelgrass tickling and noodling are permitted February 1 through May 30, except as provided in subsection (2) of this section.

10. Bow Fishing. (1) A person shall not take with archery equipment or a crossbow to bow and arrow:

(a) Sport fish, as listed in 301 KAR 1:050, Section 15;

(b) Sport fish, as listed in 301 KAR 1:050, Section 15;

(c) More than two (2) paddlefish daily.

(2) All paddlefish and catfish shall be counted toward the daily limit and shall be released or sold.

(3) Bow fishing shall be open statewide, except as noted below.

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 15, 2008 at 11 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 12, 2008)

301 KAR 2:030. Commercial guide license [guides].

RELATES TO: KRS 150.170(160.025), 150.175, [150.190], 150.412

STATUTORY AUTHORITY: KRS 150.015(40A.260), 150.025, 150.412

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 authorizes the department to protect and conserve the wildlife of the Commonwealth. KRS 150.025 authorizes the department to promulgate administrative regulations to protect fish and game from overharvest. KRS 150.170 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide. EO 2009-516, effective June 16, 2009, reorganizes and replaces the Organizational Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to establish the requirements for a commercial guide license and a guide helper.

Section 1. Definitions. (1) "Commercial guide" means a person who advertises or offers their services for remuneration to direct, instruct (excluding seminars), assist and others in taking wildlife.
(2) "Crappie limit" is defined in 301 KAR 1:201.
(3) "Direct supervision" means supervision in the approximate vicinity sufficient to provide immediate medical assistance.
(4) "Guide helper" means a person without a commercial guide license who is supervised by a commercial guide while involved in the taking of wildlife.
(5) "Take" is defined in KRS 150.010(37).
(6) "Wildlife" is defined in KRS 150.010(41).

Section 2. Commercial Guide License Requirements and Application. (1) A person wanting to commercially guide for wildlife shall possess a commercial guide license provided by the department.
(2) A commercial guide license is valid for one (1) calendar year.
(3) An applicant of a commercial guide license shall:
(a) Be eighteen (18) years of age or older;
(b) Have not been convicted of any fish or game violations during the preceding three (3) years;
(c) Possess all necessary fishing licenses and permits in order to receive a commercial guide license for fishing; and
(d) Possess all necessary hunting licenses and permits in order to receive a commercial guide license for hunting.
(4) An applicant wanting to apply for a commercial guide license shall submit to the department:
(a) An application for a commercial guide license to the Director’s Office, Division of Law Enforcement, #1 Sportsman’s Lane, Frankfort, Kentucky 40601;
(b) A signed affidavit from two (2) separate character references documenting the applicant is experienced in the field in which they are guiding and that the applicant is of good moral character and in good physical condition;
(c) Proof of a National Crime Information Center (NCIC/INK) background check through the Kentucky State Police;
(d) Effective January 1, 2010, proof of certification in cardiopulmonary resuscitation (CPR) and first aid certification shall be maintained as specified by the certifying organization;
(e) Proof of completion of a boater education course when applying for a commercial guide license for fishing. An applicant may complete the online boater education course available by accessing the department’s Web site at http://fw.ky.gov to satisfy this requirement; and
(f) Proof of completion of a hunter education course, or a valid hunter education exemption permit available by accessing the department’s Web site at http://fw.ky.gov when applying for a commercial guide license for hunting. A commercial guide applicant who guides hunters by boat shall also submit proof of completion of a boater education course or the online boater education course.
(5) A commercial guide who has possessed a commercial guide license for the past three (3) consecutive years shall not be required to submit the two (2) character reference affidavits, as established in this section, when applying for a commercial guide license.
(6) A commercial guide applicant who possesses a valid United States Coast Guard Captain’s License ("six pack") and will guide on a United States Coast Guard regulated waterway may submit a copy of this license in lieu of the [CPR, first aid,and] boater education course requirements, as established in this section, when applying for a commercial guide license. Effective January 1, 2010, a commercial guide applicant who possesses a valid U.S. Coast Guard Captain’s License (six pack) and will guide on a U.S. Coast Guard regulated waterway may submit a copy of this license in lieu of the CPR and first aid requirements, as established in this section, when applying for a commercial guide license.

Section 3. Guide Helper. (1) A commercial guide may utilize guide helpers provided they are under the direct supervision of the commercial guide, except on lands owned or leased by the commercial guide. (In which case a guide helper may work beyond the direct supervision of the commercial guide with cardiopulmonary resuscitation (CPR) and first aid certification.)
(2) A fishing guide helper shall:
(a) Have possession of all necessary fishing licenses and permits; and
(b) Be accompanied in the boat by a commercial guide; and
(3) A hunting guide helper shall have possession of:
(a) All necessary hunting licenses and permits;
(b) A hunter education card; or
(c) A valid hunter education exemption permit; and
(d) A boater education card if helping a commercial guide by boat.
(4) Effective January 1, 2010, a guide helper wishing to work beyond the direct supervision of the commercial guide shall be required to have cardiopulmonary resuscitation (CPR) and first aid certification. Certifications shall be maintained as specified by the certifying organization.

Section 4. Commercial Guide License Prohibitions and Revocation. (1) All administrative regulations pertaining to licensing of commercial guides for hunting and fishing. In accordance with KRS 150.016, this administrative regulation is necessary to ensure that the commercial aspect of fishing and hunting be represented by persons who are experienced and qualified in their respective fields and are of good moral character. The function of this administrative regulation is to screen applicants to determine their fitness for commercial hunting and/or fishing guides. Section 1. Where to Apply and Term of License. (1) All applications for a commercial guide’s license must be made through the local Conservation Officer or Wildlife-Management Area Manager, who will determine the applicant’s fitness and qualifications through personal interview and investigation and certify to the in writing to the department.
(2) A commercial guide’s license is valid for one (1) calendar year.

Section 2. Requirements. (1) Applicants must be eighteen (18) years of age or older.
(2) Applicants must be of good moral character, sober and in good physical condition.
(3) Applicants must be experienced in the field in which they are guiding.

Section 3. Restrictions and Prohibitions. (1) Persons convicted of any game- or fish-violation during the past three (3) years are prohibited from obtaining a commercial guide’s license, or the
Section 3. Petitions. (1) Persons or entities shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:
(a) A biological or ecological justification for the need to administer a drug to noncaptive wildlife;
(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and
(c) A detailed plan and timeline for administration of the drug.
(2) The commissioner may issue a waiver for the petition requirement for administration of drugs to noncaptive wildlife for specific situations involving:
(a) Public safety; or
(b) Wildlife disease outbreaks.

Section 4. Exemptions. This administrative regulation shall [does] not apply to: (1) The administration of drugs to captive wildlife including captive cervids;
(2) The treatment of sick or injured wildlife by:
(a) A licensed veterinarian;
(b) A holder of a wildlife rehabilitation permit; or
(c) A holder of a valid scientific collection permit;
(3) The administration of drugs by Commercial Nuisance Wildlife Control operators licensed by the department as set forth in 301 KAR 3:120; or
(4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 5. Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife [when] the officer has probable cause to believe the noncaptive wildlife have been administered drugs in violation of this administrative regulation.

ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, November 12, 2008)


RELATES TO: KRS 146.200-146.360, 146.410-146.550, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. 136. EO 2008-507. 2008-501 [Part 498]

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air, water, and ground water pollution. EO 2008-507 and 2008-591, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions. (1) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC50, of an effluent or a toxic
substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for one (1) hour [a brief period of time] without causing an unacceptable harmful effect.

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC₃₀, by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) "Arithmetic mean for seventy (70) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7)-day period.

(7) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sampling dates.

(8) "Balanced Indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:055, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(9) "Best management practices" or "BMPs" means:

(a) For agriculture operations as defined by KRS 224:71-100(3);
(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth and
2. Includes, but is not limited to, sanitary procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(10) "Biochemical oxygen demand", "BOD", or "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(11) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(12) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed for ninety-six (96) hours [indiscriminately] without causing an unacceptable harmful effect.

(13) "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(14) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(15) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.

(16) "Coal mining operation" means:

(a) A surface coal mining operation, which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977,

(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.

(17) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(18) "Concentrated animal feeding operation" means one of the following:

(a) "Large concentrated animal feeding operation" as defined in subsection (49) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (5) of this section;

(c) "Small concentrated animal feeding operation" as defined in subsection (7) of this section.

(19) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and disinfection as defined by 401 KAR 5:052-Section 40(3).

(20) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chloride (total residual), color, fecal coliform, fluoride, nitrate, potassium, nitrogen, oil and grease, and phosphorus.

(21) "Conventional treatment" means or includes coagulation, sedimentation, filtration, and disinfection.

(22) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents that, when exceeded, represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(23) "Day" means a twenty-four (24) hour period.

(24) "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(25) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment [Environmental and Public Protection] Cabinet.

(26) "Domestic" means relating to household wastes or commercial or industrial wastes. It includes sewerage from residential, municipal, household, or commercial waste or wastewater services from industrial water or wastewater services.

(27) "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(28) "Domestic water supply" or "DWS" means surface waters that with conventional domestic water supply treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300q-28.

(29) "Effluent limitations" is defined at KRS 224:01-010(12).

(30) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(31) "Epilimnion" means the thermally homogeneous water layer overlying the metallimnion of a thermally stratified lake or reservoir.

(32) "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram-negative, non-sporing, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous feral flora of warm-blooded animals.
"Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.

"Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

"Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

"Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

"FF" means degrees Fahrenheit.

"General permit" means a KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

"Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

"High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

"Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

"Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

"Indigenous aquatic community" means naturally occurring aquatic organisms including bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

"Inhibition concentration of twenty-five (25) percent" or "IC25" means a concentration determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

"Intermittent water" means a stream that flows only at certain times of the year.

"Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

"KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

"Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(d)(4), effective July 1, 2007.

"LC5" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the organisms tested in a toxicity test during a specified exposure period.

"LC50" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

"Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

"Measurement" means the ability of the analytical method or protocol to quantify as well as identity the presence of the substance in question.

"Medium concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(d)(6), effective July 1, 2007.

"mg" means micrograms per liter, same as ppb, assuming unit density.

"mgd" or "MGD" means million gallons per day.

"Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

"Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

"Modified Warm-Weather Aquatic Habitat" means water that has been found to be incapable of supporting and maintaining a balanced, integrated, adaptive community of warm-water organisms because of largely irretrievable man-induced changes in the waterbody or to the physical, chemical or biological habitat of the stream itself.

"Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

"Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

"Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

"Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:050.

"Nonpoint" means any source of pollutants not defined by a point source.

"Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of [land water] the Commonwealth.

"Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

"Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

"pC" or "pCi/l" means picocuries per liter.

"PC" means primary contact recreation.

"Point source" is defined by 33 U.S.C. 1362(14) [means a discrete, confined, and discrete conveyance from which pollutants are or may be discharged]. The term does not include agricultural storm water runoff or return flows from irrigated agriculture.

"POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

"Preexisting discharge" means a discharge that is occurring when applying for a KPDES permit under 401 KAR 5:040 or 401 KAR 10:020.

"Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

"Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

"Propagating" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

"Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of area-wide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the Clean Water Act, 33 U.S.C. 1251-1387, to control point sources of pollution within a planning area.

"Remined area" means only that area of a coal mining operation on which a coal mining operation was conducted before August 3, 1977.

"Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

"Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

"Seven-Q ten" or "7QX" means that minimum average flow which occurs for seven (7) consecutive days with a recurr-
rence interval of ten (10) years.

(76) "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.2(b)(9), effective July 1, 2007.

(77) "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(78) "Standard" means a water quality standard.

(79) "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

(80) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. [Irrigated ditches and] Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(81) "Total dissolved solids" or "TDS" means the total dissolved solids (filtrable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(82) "Total suspended solids" or "TSS" means the total suspended solids (filtrable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(83) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, or a physical or mental impairment of an organism or its offspring or interferes with normal propagation.

(84) "U.S. EPA" means the United States Environmental Protection Agency.

(85) "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(86) "Wetland" means land that has a predominance of hydroic soil and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(87) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 12, 2008 at noon
CONTACT: Regabail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, November 12, 2008)


RELATES TO: KRS 17.1501-17.991
STATUTORY AUTHORITY: KRS 17.554(2), 17.564
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board [to promulgate administrative regulations] to establish a comprehensive sex offender presentation evaluation procedure for court-ordered evaluations of sex offenders. KRS 17.554(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.550 to 17.590 and 17.991. This administrative regulation establishes the evaluation procedure to assure the quality of court-order comprehensive sex offender presentation evaluations.

Section 1. Definitions. (1) "Amenability to treatment" means [at the time of the evaluation] the offender is free from organic or psychological impairment that shall prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally receptive to a treatment process.

(2) "Appropriate setting" means a secure institutional setting or a community-based setting.

(3) "Approved provider" is defined by KRS 17.550(3).

(4) "Board" is defined by KRS 17.550(1).

(5) "Clinically adjusted" means a change [in changing] the risk level recommendation based on facts or evidence which indicate to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender.

(6) "Comprehensive sex offender presentation evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) areas of assessment[factors] listed in KRS 17.554(2).

(7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.

(8) "Risk of committing a sex crime" means a designation of high or not high risk based on the finding of the instrument used [and] other clinically relevant data that suggests[where] sexual recidivism is more likely than not.

(9) "Sex offender" is defined by KRS 17.550(2).

(10) "Treatment effectiveness" is defined in KRS 197.400.

Section 2. Comprehensive Sex Offender Presentation Evaluation Procedures. (1)(a) An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure.

(b) The evaluation[procedure] shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.

(c) [When] the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characteristic impairment shall be employed as circumstances allow.

(2) Risk of recommencing a sex crime shall be determined in the following manner:

(a) [Where] applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:

1. The instrument's developmental sample or subsequent study samples contain individuals with characteristics similar to the offender being evaluated; and

2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

(b) [Evaluate] If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism. The board shall identify the appropriate instrument for use, and the list of board approved instruments shall be available upon request to the Department of Corrections.

(3) The threat to public safety shall be determined in the following manner:

(a) The approved provider[evaluate] shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:

1. The sex offender's amenability to treatment;

2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;

3. The nature and duration of the offending;

4. The sex offender's psychological adjustment;

5. The sex offender's social and occupational adjustment; and

6. The sex offender's statements or indications of harm directed to another.
(b) The approved provider[evaluator] shall make a recommendation as to the appropriate setting in which treatment, if indicated, shall be provided for the sex offender.

(4) To assess amenability, the amenability to treatment shall be determined in the following manner: The approved provider shall address the following factors/domains in making this assessment:

(a) Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation; or 

(b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he shall be referred; or 

(c) Acknowledge involvement in the sex offense for which he is charged; or 

(d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat; or 

(e) verbalize a willingness to enter and fully participate in treatment.

(5) In assessing/addressing the nature of required sex offense treatment, the approved provider[evaluator] shall address management issues including:

(a) Recommendations for the focus of treatment;

(b) Special treatment considerations;

(c) Further evaluation; and 

(d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report. (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.

(2) The first section of the report shall consist of information prepared specifically for the court and shall contain the following headings:

(a) Identifying information including:

1. Name;

2. Social Security number;

3. Date of birth;

4. Age; and 

5. Indictment number or county;

(b) Referral information, including reason for referral, informed consent, and procedures;

(c) Information sources; and 

(d) Summary, conclusions, and recommendations.

(3) The second section shall include the following information from which the summary and conclusions were reached:

(a) Criminal justice information, including index offense, prior sex offense, or other legal history;

(b) Psychosocial history including:

1. Family of origin;

2. Education;

3. Military;

4. Occupational;

5. Financial;

6. Marital/Sexual;

7. Relationship;

8. Illness and Mental Health; and 

9. Medical History;

(c) Behavioral observations and mental status;

(d) Psychological testing;

(e) Diagnosis impressions;

(f) Treatment considerations, and 

(g) The statutory factors found in KRS 17.554(2).

(4) The report shall be entitled “Comprehensive Sex Offender Presentence Evaluation.”

(5) An approved provider shall place his signature at the end of the recommendation report if he:

(a) Conducted the comprehensive sex offender presentence evaluation; or 

(b) Reviewed and approved the evaluation.

(6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

(7) If an approved provider has performed a sex offender presentence evaluation for the offender, he shall not provide sex offender treatment for that individual.
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by the General Counsel, Justice Cabinet[5].
(c) Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of State Police, to provide services required for the administration of criminal justice.
(d) Individuals and agencies for the express purpose of evaluation research, or statistical activities pursuant to an agreement with the Criminal Identification and Records Branch of the Kentucky State Police (Records). The agreement shall:

1. Limit the use of data to evaluation, research, or statistical purposes;
2. Insure the confidentiality and security of the data consistent with these administrative regulations; and
3. Provide sanctions for violations of the agreement. [These dissemination limitations do not apply to conviction data.]

(2) Conviction data. Dissemination of conviction data shall be limited as follows:

(a) Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order. This restriction shall not apply to juveniles who were tried as an adult.

(b) Criminal history record checks for employment purposes. Criminal history record information of a conviction nature may be disseminated to potential employers of persons. To obtain criminal history record information regarding convictions, a prospective employee must volunteer through the potential employer shall complete the relevant form prescribed by this administrative regulation, [a form prescribed by Records] which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the potential employer, the signature of the prospective employee, and a witness signature. The form shall also include sex, race, date of birth, Social Security number, and previous addresses of the prospective employee.

(c) Nonemployment criminal records checks. Criminal history record information of a conviction nature may be disseminated to individuals, entities, and/or organizations in regard to immigration and/or housing. To obtain criminal history record information regarding convictions, an individual shall complete the relevant form prescribed by this administrative regulation, which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the recipient, entity or organization; sex; date of birth; Social Security number and previous addresses of the individual applicant. The applicable forms shall be as follows [are]:

1. Request for KSP Conviction Records/Housing, 10/03 edition; and
2. Request for Conviction Records/Emigration, 10/03 edition.

(d) In regard to employment criminal records checks, the prospective employer shall be responsible for the completion of the form as indicated in paragraph (c) of this subsection and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer.

(e) If the criminal records check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer.

(f) Pursuant to KRS 17.167(4), employees and members of fire departments, ambulance services, and rescue squads shall be exempted from the fee required in this section.

(a) The fee in this section shall not apply to applications for a license, or a renewal of a license, to carry a concealed dangerous weapon. The fees for this license are provided in KRS 237.110(7).

Section 2. As outlined in 502 KAR 30:040, the computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall log all transmissions of CHRI. The log shall contain at least the following information: the name of the agency and individual receiving CHRI, the date of release, the individual to whom the CHRI relates, the item(s) of CHRI released, and, in the case of secondary dissemination, the agency which provided the CHRI. Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRI dissemination.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Request for Conviction Records - Employment/Professional License", 10/03(6/04) edition;
(b) "Request for Conviction Records/Child Care", 9/08(10/03) edition;
(c) "Request for Conviction Records/Adoptions and Foster Homes", 9/08(10/03) edition;
(d) "Request for Conviction Records/Lottery", 10/08(10/03) edition;
(e) "Request for Conviction Records/Long-Term Care Facility", 10/03(10/03) edition;
(f) "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/03(10/03) edition;
(g) "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition;
(h) "Request for Conviction Records/Minors", 10/03(10/03) edition;
(i) "Request for Conviction Records/Nonpublic Schools", 9/08(10/03) edition;
(j) "Request for Conviction Records/Department of Education", 9/08(10/03) edition;
(k) "Request for Conviction Records/Legislative Research Commission", 10/03(10/03) edition;
(l) "Request for Conviction Records/Housing", 10/03(10/03) edition;
(m) "Request for Conviction Records/Emigration", 9/08(10/03) edition; and
(n) "Request for Conviction Records/Public Schools", 10/03(10/03) edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Post 12 at 1250 Louisville Road, Frankfort, Kentucky 40601. (502) 227-2221, Monday through Friday, [between 8 a.m. until 4:30 p.m.]

RODNEY BREWER, Commissioner
APPROVED BY AGENCY: July 15, 2008
FILMED WITH LRC: July 15, 2008 at 9 a.m.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, November 12, 2008)

503 KAR 1:110. Department of Criminal Justice Training
basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.441(1)(d)
STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. The administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund[.] and for maintenance of basic training records.

- 1457 -
Section 1. Basic Training Graduation Requirements. To graduate from the department’s basic training course, a recruit shall:

(1) Successfully complete a minimum of 378 [764] hours of training, based upon the curriculum approved by the Council in accordance with KRS 15.330 and 503 KAR 1:050;

(2) Attain a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training;

(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed basic training and;

(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit’s body weight;
2. Eighteen (18) sit-ups in one (1) minute;
3. 300 meter run in sixty-five (65) seconds;
4. Twenty (20) push-ups; and
5. One and five-tenths (1 1/5) mile run in seventeen (17) minutes twelve (12) seconds.

(b) If a recruit passes all events when participating in the physical training entry test, the recruit[he/she] shall have met the physical training entry requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training entry test:

1. The recruit[he/she] shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;
2. All failed events shall be retested on the same date;
3. If the recruit passes all previously failed events on the date of the retest, the recruit[he/she] shall have met the physical training entry requirements; and
4. If the recruit does not pass all previously failed events on the date of the retest, the recruit[he/she] shall be disqualified from the department’s basic training course for which he or she is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) Within five (5) days from the final date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit’s body weight;
2. Eighteen (18) sit-ups in one (1) minute;
3. 300 meter run in sixty-five (65) seconds;
4. Twenty-five (25) push-ups; and
5. One and five-tenths (1 1/5) mile run in sixteen (16) minutes fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit[he/she] shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit[he/she] shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;
2. All failed events shall be retested on the same date;
3. If the recruit passes all previously failed events on the date of the retest, the recruit[he/she] shall have met the physical training graduation requirements; and
4. If the recruit does not pass all previously failed events on the date of the retest, the recruit[he/she] shall be considered to have failed basic training.

(3) Physical training midterm test. During week nine (9) of basic training, the recruits shall be administered the physical training requirements for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Failure and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit that is removed from basic training due to a training area or segment failure prior to the successful completion of DUl Detection before reaching the beginning of week nine (9) shall:

1. Be required to repeat the entire basic training course; and
2. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b) If a recruit fails a segment or area after the completion of DUl Detection, the recruit[he/she] shall:

1. [base training in week nine (9) through week eighteen (18)],
2. He or she shall:
   a. Be removed from the basic training class;
   b. Re-enroll basic training in a subsequent class that has the first available vacancy, and;
3. [Start the [he or her] training at the beginning of the training area or segment/module] that the recruit did not successfully complete.

(c) If a recruit fails the Practical Examination I, Practical Examination II, or Academic Examination 5, Final Exam, the recruit shall repeat basic training at the conclusion of DUl Detection.

(d) Upon the recruit’s [he or her] return, the recruit shall attend and participate in the area or segment, but shall not be retested in the training area or segment that was previously passed.

1. [was in at the time of the failure];
2. In accordance with Section 6(2) of 503 KAR 3:030, the recruit’s hiring agency shall pay to the department the full tuition, room, and board costs of repeating the training area/module which was failed. The hiring agency may recover these costs of repeating the training area/module from its recruit; and
3. [If the training area/module is successfully completed, the recruit shall continue with the remainder of the basic training course.]

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2C(2)(c) of this administrative regulation:

(a) Shall not graduate with the recruit[he or her] basic training class;
(b) Shall be permitted to retest with the next basic training class; and
(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and
(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. The [modules]—(4) Basic training curriculum shall include the following fourteen (14) different training areas on the following areas:[modules]:

(1)(a) Administration and testing;
(2)(b) Telecommunications (MDT);
(3)(c) Legal subjects;
(4)(d) Physical training;
(5)(e) Defensive tactics;
(6)(f) Patrol;
(7)(g) Vehicle operations;
(8)(h) Firearms;
(9)(i) Criminal Investigation;
(10)(j) D.U.I./Field sobriety testing;
(11)(k) Breath testing;
(12)(l) Modular evaluation/testing;
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(13)[(m)] First Aid/C.P.R./A.E.D.; and
(14)[(n)] Homeland security.
(15) Basic training shall be divided into five (6) tested
areas/modules:
(a) I; (c) If a recruit fails Practical Examination II, the recruit may be
(b) II; (d) reexamined:
(c) III; (1) Immediately; or
(d) IV; (2) No later than the last scheduled day of the basic training
effective: (e) V; (f) course.
(e) V; and
(f) VI.
(3) If a recruit is unable to complete basic training, but legally
entitled to complete the unfinished tested modules of the course,
the recruit shall restart at the beginning of the module which he or
she was in when the recruit left basic training.

Section 5. Examinations. (1) A recruit shall be examined in the
following segments and six (6) areas of basic training:
(a) Area I, composed of the following:
1. Academic Examination I Segment; or
2. Academic Examination I (Segment 2); and
3. Academic Examination I (Segment 3); and
4. Academic Examination I (Segment 4).
5. Academic Examination I (Segment 5).[-Five (5)-academic
tests]
(b) Area II:
1. Firearms, including:
   a. Day handgun;
   b. Night handgun;
   c. Day Shotgun; and
   d. Low-light shotgun qualification;
2. Performance driving evaluation, practical; and
3. Defensive tactics.- Which beginning with Class #204] shall
   include a:
   a. Practice[Skilled test, and
   b. Written[Pressure Point Contol Tactics Management System]
   (PPCT) written certification test;
   c. Area III:
1. Breath test segment, including:
   a. Practical examination; and
   b. Written examination; and
   2. DUI detection segment, including:
   a. Practical examination; and
   b. Written examination;
   (d) Area IV: American Red Cross certification in the following:
1. Professional rescuer CPR-automated external defibrillation
   segment; and
2. First aid segment:
   (a) Area V: Mobile Data Terminal Certification segment; and
   (b) Area VI: Practical exams;[
   1. Practical Examination I[Patrol practical exam]; and
   2. Practical Examination II[Investigative practical exam].
   (2) A recruit shall be permitted one (1) reexamination in each
   of the six (5) areas of basic training
(3) A recruit who fails an examination, other than defensive
tactics or the Practical Examinations[Patrol and investigative-practical-exams], shall not be reexamined:
(a) Earlier than forty-eight (48) hours from the original exami-
nation; or
(b) Later than:
1. Ten (10) days after the original examination. A recruit may
   submit a written request to the branch manager for an additional
   five (5) days in which to take the reexamination; and
2. The last scheduled day of the basic training course.
(4) Failure of a defensive tactics examination or Practical Ex-
mamination II.
(a) If the failure occurs prior to the last scheduled day of defen-
sive tactics training, the recruit shall not be reexamined earlier than
the last scheduled day of defensive tactics training.
(b) If the failure occurs on the last scheduled day of defensive
tactics training, the recruit shall not be reexamined:
1. Earlier than twenty-four (24) hours from the original exami-
nation; or
2. Later than the last scheduled day of the basic training
course.

Section 6. Absence. (1) A recruit may have excused absences
from the course with approval of the director of the certified school
or his designee.
(2) An excused absence from the course which causes a re-
cruit to miss any of the 7587464] hours of basic training shall be
made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic
Training. (1) If a recruit is prevented from completing the basic
training course due to extenuating circumstances beyond the con-
trol of the recruit, including injury, illness, personal tragedy, or
agency emergency, he shall be permitted to complete the unfin-
ished areas of the course within 180 days immediately following
the termination of the extenuating circumstance, if the:
(a) Extenuating circumstance preventing completion of basic
training does not last for a period longer than one (1) year; and
(b) Failure to complete is not caused by a preexisting physical
injury or preexisting physiological condition.
(2) If a recruit is prevented from completing the basic training
course due to being called for active duty in the Kentucky National
Guard or other branches of the United States Armed Forces, the
recruit shall be permitted to complete the unfinished areas of the
course within 180 days immediately following his or her return from
active duty service.

Section 8. Termination of Employment while Enrolled. If, while
enrolled in the basic training course, a recruit's employment as a
police officer is terminated by dismissal, and the recruit [he] is
unable to complete the course, the recruit[the] shall complete the
remaining training within one (1) year of reemployment as an offic-
er. The recruit shall repeat basic training in its entirety if:
(1) The break in employment exceeds one (1) year; or
(2) The termination of employment is a result, directly or indi-
crectly, of disciplinary action taken by the department against the
recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of
each basic training course, the department shall, for each recruit
who completes the course, complete and send the following forms
to the council:
(a) EOCJT Form 68-1 (Application for Training Credit);
(b) EOCJT Form 29-1 (Agency Requests for Training); and
(c) EOCJT Form 29-1PA (Agency Requests for Training - Pay
Agency Form).
(2) The department shall send a copy of the DOCJT Form 68-1
to the:
(a) Council for verification; and
(b) EOCJT Records Section Supervisor.
(3) All training records required for fund purposes shall be
retained by the department, but a copy of pertinent facts shall be
sent to the fund administrator upon written request.
(4) All training records shall be:
(a) Available to the council, the secretary, and the fund admin-
istrator for inspection or other appropriate purposes, and
(b) Maintained in accordance with applicable provisions of KRS
Chapter 171.

Section 10. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "DOCJT Form 68-1 - Application for Training Credit", 8/22/02;
(b) "DOCJT Form 29-1 - Agency Requests for Training",
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10/22/06, and
(c) "DOJCT Form 29-1PA - Agency Requests for Training - Pay Agency Form", 7/12/06.
(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.

WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: September 5, 2008
FILED WITH LRC: September 5, 2008 at 2 p.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (502) 622-3073, fax (502) 622-5027.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic Operations
(As Amended at AFRS, November 12, 2008)

603 KAR 5:320. Safety in highway work zones.
RELATES TO: KRS 189.232, 189.2325, 189.390(4)(b), 189.394(6)
STATUTORY AUTHORITY: KRS 174.080, 189.2325
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.2325 requires the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for traffic[ speeding] violations occurring on state-maintained streets or highways in a highway work zone. KRS 189.390(4)(b) authorizes the Transportation Cabinet to temporarily reduce established speed limits in a highway work zone without an engineering or traffic investigation. This administrative regulation establishes guidelines for the posting of signs in highway work zones and addresses the maximum reduction in speed limit the Transportation Cabinet may be able to effect without an engineering or traffic investigation.

Section 1. Definition. "Highway work zone" is defined as "the area of a highway where the fines for traffic violations [prevention of speeding] are to be doubled, the Department of Highways shall place [cause to be placed] a sign with the following message: "Fine Doubled in Work Zone".
(2) At the end of that portion of a highway work zone where the fines for traffic violations [prevention of speeding] are to be doubled, the Department of Highways shall place [cause to be placed] a sign with the following message: "End Double Fine".
(3) The construction or manufacture of double fine signs shall be governed by the criteria set forth in the Department of Highways document "Double Fine Signs Specifications".
(4) The signs required by subsections (1) and (2) of this section shall be removed or covered so that the required message is not visible or legible to the traveling public or a law enforcement officer when the highway work zone does not have a worker present for more than a two (2)-hour period of time.

Section 3. Placement of Double Fine Signs. (1) A highway work zone shall be eligible for placement of the double fine signs if:
(a) A worker is not routinely protected by a barrier wall; or
(b) A condition exists which exposes a worker to traffic hazards.
(2) The double fine signs shall only be placed to affect that portion of the highway work zone where a worker is exposed to traffic hazards.
(3) The double fine signs may be relocated as the project taking place in the highway work zone progresses.
(4) If the highway on which the "double fine signs" are to be placed is not a divided highway, the fine shall be doubled for both directions of travel.
(5) The "double fine signs" specified in Section 2 of this administrative regulation shall be placed facing the on-coming traffic at both ends of the work zone on a highway which is not divided.
(6) If the highway on which the "double fine signs" are to be placed is a divided highway, the fine shall be doubled only for a direction of traffic which is signed pursuant to this administrative regulation.

Section 4. State Forces. The Department of Highways engineer overseeing a construction project or maintenance project which is being accomplished with state forces may place double fine signs in accordance with the provisions of this administrative regulation.

Section 5. Encroachment Permit Holders and Contractors for the Department. (1) An applicant for an encroachment permit pursuant to 603 KAR 5:150 or a contractor for the department who will have workers exposed to traffic hazards may request permission to place double fine signs in accordance with the provisions of this administrative regulation.
(2) The Department of Highways engineer who approves the encroachment permit or serves as engineer for the project shall grant or deny the request to place double fine signs at a highway work zone based on the criteria established in Section 3(1) of this administrative regulation.
(3) The Department of Highways engineer who approves an encroachment permit or oversees a construction project request for work on a highway which has hazardous conditions may require the permit holder to place double fine signs at the highway work zone.
(4) The placement of a double fine sign in a work zone shall not relieve a permit holder or contractor from his duty to have an appropriate traffic control plan for each work location.
(5) The double fine signs placed by the permit holder or contractor shall meet the requirements of the "Double Fine Sign Specifications".
(6) A permit holder or contractor shall notify the Transportation Cabinet of the times and locations of the placement of the double fine signs.

Section 6. Reduced Speed Limits. (1) The Department of Highways may temporarily reduce the speed limit in a highway work zone
(2) The Department of Highways shall not reduce the speed limit in a highway work zone by more than fifteen (15)[ten-(10)] miles per hour without an engineering or traffic investigation if the highway work zone is located on a section of highway with a speed limit of seventy (70) miles per hour.
(3) The Department of Highways shall not reduce the speed limit in a highway work zone by more than ten (10) miles per hour without an engineering or traffic investigation if the highway work zone is located on a section of highway with a speed limit of sixty-five (65) miles per hour or less.
(4) A temporarily reduced speed limit in a highway work zone shall be signed with a black on white regulatory sign.
(5)(4) A black on orange sign recommending a speed shall be advisory.
(5)(6) The Department of Highways engineer in charge of a maintenance or construction project may temporarily reduce the speed limit in a highway work zone without placing double fine signs in the zone.

(2) This material may be inspected, reviewed, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of Traffic Operations, 200 Mero Street. [The address is First Floor, State Office Building, 601 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. (The telephone number is (502) 694-3090).]
EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 12, 2008)

702 KAR 3:080. Fidelity[treasurer’s] bond, penal sum for treasurer, finance officer, and others.

RELATES TO: KRS 156.010, 160.550
STATUTORY AUTHORITY: KRS 156.029(7), 156.070, 160.560(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 156.070 authorizes the Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 160.560(2) requires each local board of education treasurer to be bonded in accordance with Kentucky Board of Education administrative regulations. This administrative regulation establishes a penal sum for the bond of treasurer and requires the bonding of other school employees.

Section 1. Definitions. (1) "Total current assets" means the 61XX series in the balance sheet object codes as provided in the [KETS-District Administrative-System-Chart-of-Accounts-Descriptions incorporated by reference in]702 KAR 3:120
(2) "Total revenue" means codes 1000-4999 in the revenue object codes as provided in the [Uniform School Financial Accounting System-Chart-of-Accounts]702 KAR 3:120 incorporated by reference in.

Section 2. (1) A local board of education shall require a fidelity bond from the board treasurer, the finance officer, and others holding similar positions who are responsible for district funds or who receive and expend funds on behalf of the school district.
(2) A local board of education, on the advice of the Commissioner of Education, shall determine the amount of the penal sum of the fidelity bond for all employees by July 1st of each year.
(3) The local board of education shall submit the fidelity bond to the Commissioner of Education for approval no later than July 31st of each year. A district shall not submit a multiyear bond for approval in subsequent years if the bond amount is still adequate. Every July 1st of each year, a local board of education, on the advice of the Commissioner of Education, shall determine the amount of the penal sum of the bond of treasurer of the board and that of other school employees who are responsible for the board of education funds.

Section 3. A bond shall not be approved if the Commissioner of Education determines that the bond is inadequate to safeguard the funds of the district board of education.-pure pursuant to the commissioner’s authority in KRS 156.310.

Section 4. (1) A local board of education shall require the bonding of all employees who are responsible for bond funds. The cost of bonds shall be a liability of the general fund or of any account which the specific bond protects. The penal sum of any bond shall be determined by the following table based on an exposure factor of twenty (20) percent of the total current assets plus ten (10) percent of the total revenue in the prior fiscal year:

<table>
<thead>
<tr>
<th>EXPOSURE FACTOR</th>
<th>MINIMUM AMOUNT OF BOND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $25,000</td>
<td>$2,500</td>
</tr>
<tr>
<td>$25,001 to $125,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>$125,001 to $400,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>$400,001 to $1,000,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>$1,000,001 to $2,000,000</td>
<td>$150,000</td>
</tr>
<tr>
<td>$2,000,001 to $4,000,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>$4,000,001 to $6,000,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>$6,000,001 to $10,000,000</td>
<td>$400,000</td>
</tr>
<tr>
<td>$10,000,001 to $15,000,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>$15,000,001 to $25,000,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>$25,000,001 to $75,000,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>$75,000,001 to $175,000,000</td>
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<tr>
<td>$175,000,001 to $500,000,000</td>
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<tr>
<td>$500,000,001 to $1,000,000,000</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>$1,000,000,001 to $1,500,000,000,000</td>
<td>$4,000,000</td>
</tr>
</tbody>
</table>

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 of Education

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 14, 2008 at 4 p.m.
CONTACT PERSON: Kevin C. Brown, Acting Associate Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Meri Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 12, 2008)

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


NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky Acts ch. 127, Part I, D. 4, (14) requires the Kentucky Board of Education to establish by administrative regulation procedures by which the Commissioner of Education may approve innovative alternative school calendars. This administrative regulation establishes uniform procedures for approval of innovative alternative calendars.

Section 1. (1) A local board of education may request approval of an innovative alternative school calendar for the 2008-2009 school year or the 2009-2010 school year by submitting a written request to the Commissioner of Education.
(2) The request shall:
(a) Be signed by the superintendent and board of education chairperson;
(b) Contain a specific explanation of the reason for the request; and
(c) Include the following information:
   (i) How the alternative calendar will improve teaching and learning in the district;
2. (b) How 1,062 hours of instruction will be included in the calendar;
3. (e) The structure of any instructional days that are less than six hours in length; and
4. (d) A description of how the alternative calendar will provide for professional learning situations designed to improve instructional practices that will enhance student learning.

Section 2. (1) A request for approval of an innovative alternative school calendar shall be submitted to the Commissioner of Education no later than June 30 preceding the school year for which the request is submitted.

(2) The commissioner shall approve the request upon a determination that:

(a) The requirements established in Section 1(2) of this administrative regulation have been met and
(b) The alternative calendar is designed to improve teaching and learning in the district.

This is to certify that the chief state school officer has reviewed and recommended the administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner
JOE BROTHERS, Chairperson
APPROVED BY AGENCY: June 12, 2008
FIL ED WITH LR A: June 16, 2008 at 4 p.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(At Amended at ARRS, November 12, 2008)


RELATES TO: KRS 156.031; 156.070, 156.160
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.031 requires that administrative regulations relating to statutes amended by the 1996 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission. Prior to December 30, 1996, KRS 156.070 authorized the Kentucky [State] Board of [Elementary and Secondary] Education to prescribe such courses of study, curricula, and programs as it deems necessary for the common schools. [And] KRS 156.160 requires the Kentucky [State] Board [for Elementary and Secondary] Education to promulgate [adopt] administrative regulations determining the courses of study for the different grades and the requirements for graduation from offered courses. A Commonwealth Diploma shall be issued to students completing a Commonwealth Diploma Program. The purpose of such a diploma and program are to encourage high academic achievement in Kentucky high schools; to encourage more of the capable students to enroll in college; to improve the working relationship between high schools and colleges and universities; and to allow students to gain college credit prior to attending college. This administrative regulation implements a Commonwealth Diploma Program and sets forth the conditions and criteria under which a Commonwealth Diploma shall be issued.

Section 1. (1) The Kentucky [State] Board of [Elementary and Secondary] Education shall award to each student in the public schools of this state completing a Commonwealth Diploma Program a Commonwealth Diploma.

(2) The [Kentucky] diploma shall be printed by the Kentucky Department of Education and sent to the appropriate district upon verification of program completion to the Department of Education by the local district. The [Kentucky] diploma shall be issued in the name of the [student].

(3) A student [so identified and verified by the Department of Education shall be on forms supplied by the Department of Education and shall be submitted in a timely fashion so as to provide for the Commonwealth Diploma] at regularly scheduled graduation ceremonies, and forms being incorporated herein by reference and available for inspection, copying, and obtaining from the 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. Those students receiving a Commonwealth Diploma shall be titled as a recipient of a certificate at graduation ceremonies.

Section 2. The requirements for obtaining a Commonwealth Diploma shall include:

(1) Successful completion of at least twenty-two (22) approved units of credit, including all the minimum unit requirements for high school graduation.

(2) Successful completion of all minimum requirements of the Precollegiate Curriculum established by the Council on Postsecondary Education in KAR 3:340, including

(a) Language arts—four (4) units (English I, English II, English III, and English IV)

(b) Mathematics—three (3) units (Algebra I or Algebra II, geometry, and one (1) elective)

(c) Science—two (2) units (Biology I or Chemistry I, or Physics I, and one (1) elective)

(d) Social Studies—two (2) units (World Civilization and U.S. History)

(3) A successful completion (i.e., receiving a grade of B or the equivalent of "C" or better) of at least four (4) courses, [as hereinafter defined] which contain essential content as described in the Advanced Placement (AP) Program Course Description booklets of the College Entrance Examination Board and which include [such booklets being incorporated herein by reference and copies of which may be obtained from the College Entrance Examination Board],

1. English - one (1) course;
2. Science or mathematics - one (1) course (selected from biology, chemistry, or physics, or mathematics);
3. Foreign language - one (1) course (selected from French, German, Latin, or Spanish); and
4. One (1) additional AP course (selected from English, science, foreign language, history, computer science, political science, music, or art);

(4) Successful completion (i.e., receiving a grade of B or the equivalent of "C" or better) of at least four (4) courses, [as hereinafter defined] which contain essential content as described in the International Baccalaureate (IB) Program course description booklets and which include [such booklets being incorporated herein by reference and copies of which may be obtained from the International Baccalaureate North America, Inc.],

1. Language A, the student's first language English, - one (1) course,
2. Natural or experimental science or mathematics - one (1) course (selected from biology, chemistry, physics, or mathematics),
3. Language B, a foreign language - one (1) course (selected from French[,] Spanish, or Spanish); and
4. One (1) additional IB or AP course; or
(c) A combination of AP and IB courses that address the content areas specified in this section; or

(4) Completion of one (1) AP Examination in at least three (3) of the AP or IB areas specified in subsection (3) of this section, without regard to score.

Section 3. (1) During the 1997-98 and 1998-99 school years, the Kentucky Department of Education shall reimburse to local school districts the costs of required AP examinations for all students successfully completing the aforementioned criteria. Beginning with the 1999-2000 school year, reimbursement to the local school district by the Department of Education for the costs of the
required AP examinations for a student successfully completing the criteria established in Section 2(4) of this administrative regulation shall [will] be contingent upon the [a] student (students) receiving a [specified] minimum composite score of eight (8) on the three (3) required AP examinations (examinations). This requirement shall be phased in over a four-year period, with said minimum composite score starting at five (5) in 1992-93 and being raised by one (1) each school year until it reaches a minimum score of eight (8) in 1996-97.

(2) Reimbursement funds shall be sent [for distribution] to local districts once each year on the basis of documentation supplied by the districts.

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 BROTHERS, Chairperson
APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 14, 2008 at 4 p.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, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, November 12, 2008)

787 KAR 1:110. Appeals.

RELATES TO: KRS 131 570(1), 341.420(2), 341.430(2), 341.440, 341.450(3)

STATUTORY AUTHORITY: KRS 151B.020(3)(e), 341.115(1), 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 151B.020(3)(e) exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administrative regulation establishes the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a determination issued pursuant to KRS 131.570(1) or 341.420(2), notice of determination, or from a notice of income tax refund due or interest due issued by the Department of Revenue in full or partial satisfaction of an outstanding obligation, shall file a petition with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

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

(2) Notice of hearings.

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

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

(c) Any party to a hearing may request an alternative date for the hearing to be rescheduled. The division shall reschedule the hearing upon presentation of a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;
2. Medical emergency;
3. Death of a family member; or

(d) Qualification of referees.

(1) A referee shall not participate in the hearing of an appeal in which the referee has an interest.

(2) Challenges to the interest of any referee shall be heard and decided by the commission.

(3) Hearing of appeals.

(a) The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and his witnesses.

(b) The referee shall, if [the-deene-ii] necessary to secure full information on the issues, examine each party who appears and his witnesses.

(c) The referee may take any additional evidence that is necessary.

(d) If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(e) The referee shall:

1. Decide the appeal on the basis of the stipulation; or
2. Schedule a hearing and take further evidence.

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

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

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

(e) The referee may grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing shall provide copies of the documents to the referee and the opposing party prior to the hearing.

(g) [sufficient-time-for-it-to-be-reviewed] If failure to provide both the referee and the opposing party with copies of the evidence shall result in its being excluded from the record.

(5) Decisions.

(a) After the hearing is concluded, the referee shall (promptly set forth in writing the referee's finding of facts on the issues involved, then) decide, and the reasons for the decision.

(b) If the claimant fails to appear and prosecute an appeal, the referee shall summarily affirm the determination.

(c) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.

(d) If the decision is to deny previously awarded benefits, either retroactively or forthwith, a stop payment directive shall be issued to the division by the referee on the date of the decision is mailed to the claimant.

Section 2. Appeals to the Commission From a Referee Decision. (1) Presentation of an appeal to the commission.

(a) Any interested party wishing to appeal to the commission from a decision of a referee shall give notice in writing to the commission, the division, or the division's autho-
rized representative in any form that clearly indicates the par-ty’s intention to appeal.

2. The [Any interested-party wishing to appeal to the commis-sion from a decision of a referee shall make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party’s inten-tion to appeal. A notice of application for leave to appeal shall be mailed by the division to other interested parties.

(b) An [application for leave to appeal, based on the confor-mity of the appeal with the requirements of KRS 341.420(4), shall be considered intimated and filed as of the date [at the time] it is received by the department as established in 787 KAR 1:230.

(c) The commission shall:

1. Grant or deny the application for leave to appeal without a hear-ing; or

2. Notify the parties to appear at a specified place and time for appeal [argument] on the application.

(2) Hearing of appeals.

(a)1. Except if the commission orders cases removed to it from a referee, all appeals to the commission shall[may] be heard upon the records of the division and the evidence and exhibits intro-duced before the referee.

2. In the hearing of an appeal on the record, the parties may present written arguments and, at the commission’s discretion, be allowed to present oral arguments.

3. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the com mission’s notification of appeal receipt within which to file a written argument.

4. The appellee shall have seven (7) days thereafter within which to file a response.

5. Written argument shall be considered filed as of the date [when] it is received by the department as [established in] 787 KAR 1:230.

6. The commission may extend the time for filing written argu-ment upon a showing of good cause, in accordance with the examples listed in Section 2(8)(1) through 4 of this adminis-trative regulation, by either party to the appeal.

(b)1. The commission may direct the taking of additional evi-dence before it, if needed, in order to determine the appeal.

2. [As it declines.] The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall return the record to the commission for its decision.

3. Any case ordered by the commission to be removed to it from a referee shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.

4. The determination of appeals before the commission shall [promptly] issue a written decision, which shall affirm the decision of the referee or present a separate finding of facts, decision, and reasons.

2. The decision shall be signed by members of the commission who heard the appeal.

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

[(a) is a matter of first impression;
(b) clarifies or defines the application of statutory language;
(c) reverses a previous precedent commission decision;
(d) adopts a court decision.

(b) A decision designated a precedent shall be binding on all lower levels of determination.

(c) If a decision of the commission is not unanimous, the decision of the majority shall control.

(d) Minorit[y may file a dissent from the decision of the ma-jority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested par-

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete(destroy) the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 314.450.

5. Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) days of the mailing date of the decision, request in writing a reconside-ration of the commission’s decision.

1. The commission shall grant or deny the request for reconsideration based on the conformity of the request to this paragraph.

2. A request for reconsideration shall be considered inti-mated and filed as of the date [filed for reconsideration of the commission’s decision. The commission shall grant or deny the application for reconsideration. An application for reconsideration shall be considered intimated and filed at the time it is received by the department as established in 787 KAR 1:230.

(b) An [application-OR-appeal] for reconsideration of a decision of the commission shall not stay the running of time for appeal to the court.

5. Precedent decision process and digest.

[a. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently in effect.

[b. The manual shall be available, on request at a fee estab-lished by the commission.] Individual decisions shall be available on request without charge.

Section 3. Appeals to the Commission From an Employing Unit. (1) Presentation of an appeal to the commission:

(a) Any employing unit desiring application for review of any administrative determination pursuant to KRS 314.570(1) or 341.420(4), or to appeal from a notice of income tax refund-issuer processed by the Department of Revenue in full or partial satisfaction of any outstanding contribution, interest or penalty assess-ments, shall do so by filing with the commission, the division, or the division’s [or its] authorized representative a written statement clearly indicating the employing unit’s intention to appeal within the time limits prescribed by KRS 314.570(1) or 341.420(4).

(b) An [application-OR-appeal] appeal shall be considered intimated and filed as of the date [at the time] it is received by the department as established in 787 KAR 1:230.

2. Notification of hearings.

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

1. Deny the appeal as untimely; or

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

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

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

1. A claimant’s inability to attend the hearing due to current employment;

2. Medical emergency;

3. Death of a family member; or


3. Appointment of commission representative.

[a. The commission may direct that any hearing be conducted on its behalf by an authorized representative.

b. A representative shall not participate in the hearing of an appeal in which the representative(s) has an interest.

c. Challenges to the interest of any representative shall be heard and decided by the commission.


[a. Any party to the appeal may present pertinent evidence and
may question the opposite party and [his] witnesses.

1. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and [his] witnesses.

2. (a) The commission may take any additional evidence which is necessary.

(b) [If deemed necessary.] If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

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

2. The commission shall:

A. [1.] Decide the appeal on the basis of the stipulation; or

B. [2.] Schedule a hearing and take further evidence.

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

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

1. Create undue expense for any party;

2. Require any party to travel more than fifty (50) miles;

3. Put either party or the referee at personal risk; or

4. Create a security risk for the public or division staff.

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

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing shall provide copies of the documents to the commission and to the opposing party prior to the hearing.

2. [In sufficient time for the evidence to be received.] Failure to provide both the commission and the opposing party with copies of this evidence shall result in its being excluded from the record.

(f) Decisions.

A. [1.] Following the conclusion of a hearing, the commission shall [promptly] set forth in writing its finding of the facts, its decision, and its reasons for the decision.

B. If the appellant fails to appear and prosecute an [his] appeal, the commission shall [may] summarily affirm the administrative determination of the refusal of income tax refund or intercept from which the appeal was made.

C. The decision shall be signed by the members of the commission who considered the appeal.

4. [2.] The commission may designate a decision precedent for future cases of similar circumstances if the decision:

a. Is a matter of first impression;

b. Clarifies or defines the application of statutory language;

c. Reverses a previous precedent of commission decision; or

d. Adopts a court decision.

5. [3.] A decision designated a precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

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

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(e) Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(f) Reconsideration.

3. Any party adversely affected by a decision of the commission may, within ten (10) days of the mailing date of the decision, file a request in writing for reconsideration of the commission's decision.

1. The commission shall grant or deny the reconsideration based on the conformity of the request to this paragraph.

2. A reconsideration shall be considered initiated and filed as of the date [application for reconsideration of the commission's decision. The commission shall grant or deny the application for reconsideration on or before the application for reconsideration shall be considered initiated and filed at the time it is received by the department as established in 787 KAR 1-230.]

2. A request [An application] for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

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

2. Appeal record.

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

(b) Pursuant to KRS 341.449, a digital recording shall be made of any hearing conducted by the division or commission.

5. Supplying information from the records of the Division of Unemployment Insurance.

(a) Information from the records of the division shall be furnished to an interested party or [his] representative to the extent necessary for the proper presentation of the party's case, only upon written request.

(b) [Therefore] All requests for information shall state, as clearly as possible, the nature of the information desired.

(c) An interested party or [his] representative may examine a record in the possession of a referee, the commission, or its authorized representative at a hearing.


(a) All hearings shall be conducted informally without regard to common law, statutory or technical rules, or procedure and in a manner as to determine the substantial rights of the parties.

(b) The parties and their witnesses shall testify under oath or affirmation.

(c) All issues relevant to the appeal shall be considered and passed upon.

5. Reopening hearings.

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

(b) The request shall:

1. Be granted if the party has shown good cause, in accordance with the examples listed in Section 3(2)(c) through 4 of this administrative regulation, for [his] failure to appear;

2. Be in writing;

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

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

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

5. Providing a digital recording of testimony (tape(s)) to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing. To request a duplicate, the party or authorized representative shall:

(i) Contact [by contacting] the Kentucky Unemployment Insurance Commission at the address listed on the decision; and

5. Include with the request a CD-R, CD-RW, or USB flash drive, with the appropriately stamped return envelope.

(b) There shall not be a [fee] charge for this service, if the party included with the [provided] party shall include with their
Section 2. Employers shall comply with the requirements for reporting and recording of occupational injuries and illnesses established at 29 C.F.R. Part 1904, revised as of July 1, 2008[2006], as amended by the definitions in Section 1 of this administrative regulation and the requirements in Section 3 of this administrative regulation.

Section 3. Reporting Fatalities, Amputations, or In-Patient Hospitalizations. (1) Employers shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance [Department of Labor, Office of Occupational Safety and Health, Division of Compliance], at (502) 554-3070, any work-related incident which results in the following:

(a) The death of any employee; or

(b) The hospitalization of three (3) or more employees.

(2) The report required under subsection (1) of this section shall be made within eight (8) hours from when the incident is reported to the employer, the employee's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OHSA (1-800-321-6742).

(3) Employers, Effective November 1, 2008, through December 31, 2008, shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance [Department of Labor, Office of Occupational Safety and Health, Division of Compliance], at (502) 554-3070, any work-related incident which results in the following:

(a) An amputation suffered by an employee; or

(b) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident.

(4) The report required under subsection (3) of this section shall be made within seventy-two (72) hours from when the incident is reported to the employer, the employee's agent, or another employee.

J.R. GRAY, Secretary
APPROVED BY AGENCY: September 4, 2008
FILED WITH LRC: September 5, 2008 at 1 p.m.
CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3291.

PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection and Education Division
(As Amended at ARRS, November 12, 2008)


RELATES TO: KRS 91A.080, 91A.0810, 304.3
STATUTORY AUTHORITY: KRS 91A.080(2)
NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 2, 2008, and effective June 16, 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 of 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.

Section 1. Definitions. (1) "Collector 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
Section 2. Notice to Current Policyholders. (1) Before December 31, 2008, an insurance company shall provide each policyholder 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 billings for your policy. If you believe that you have been erroneously 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 a single insurer, the insurance company may send one (1) notice to the policyholder to satisfy the requirements of subsection (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) Itemize:
       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 corresponding 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:
          a. [On-the]-Renewal certificate upon renewal of the policy; or
          b. [On-the] Billing for each period for which premium or additional premium is charged to a policyholder by the insurance company.

(4)(a) If local government tax is owed to multiple taxing jurisdictions, the disclosure required in subsection (3) of this section shall list the taxing jurisdictions 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 taxing 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 the collection fee.

(6)(a) An insurance company may provide the disclosure on a notice separate from either the renewal certificate or billing if providing 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 LIRC: October 15, 2008 at noon
CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0838, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Department of Insurance
Life Insurance Division
(As Amended at ARRS, November 12, 2008)

806 KAR 6:130. Minimum standards for determining reserve liabilities and nonforfeiture values for preneed insurance.

RELATES TO: KRS 304.2-110, 304.3-510, 304.6-130, 304.6-140, 304.6-170, 304.6-171, 304.6-180, 304.12-080, 304.12-240, 304.15-542

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-130, 304.15-410

NECESSITY, FUNCTION, AND CONFORMITY. EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.69-152. KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum standard for valuation of policies. KRS 304.15-410 provides for reserves held under any plan of life insurance which provides for a premium premium determination to be appropriate in relation to the benefits and computed by a method which is consistent with the principles of the standard valuation law, as determined by regulations promulgated by the executive director. This administrative regulation establishes minimum mortality standards for preneed insurance product reserves and nonforfeiture values, and requires the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality table in determining the minimum standard of valuation of reserves and minimum nonforfeiture values for preneed insurance products.

Section 1. Definitions. (1) "1980 CSO Table (F)," with or without Ten (10) Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table; with or without Ten (10) Year Select Mortality Factors.

(2) "1980 CSO Table (M)," with or without Ten (10) Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten (10) Year Select Mortality Factors.

(3) "2001 CSO Mortality Table" means a mortality table that:
   (a) Consists of separate rates of mortality for male and female lives;
   (b) Was developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force and adopted by the National Association of Insurance Commissioners in December 2002;
   (c) is published in the Proceedings of the National Association of Insurance Commissioners [NAIC] (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table; and
   (d) includes, unless the context indicates otherwise, both:
       1. The ultimate form and the select and ultimate form of the table;
       2. The smoker and nonsmoker mortality tables and the composite mortality tables; and
       3. The age nearest birthday and the age-last-birthdays of the mortality tables.

(4) "Commissioner" means the Commissioner of the Department of Insurance.

(5) "Insurer" is defined in KRS 304.1-040.

(6) "Merged Gender Ultimate 1980 CSO Table" means any mortality table which is a blend of the 1980 CSO Table (M), without Ten (10) Year Select Mortality Factors, and the 1980 CSO Table (F), without Ten (10) Year Select Mortality Factors, which have been adopted by the National Association of Insurance Commissioners.

(7) "Preneed insurance" means a life insurance policy issued by an insurance company which:
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(a) Whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial agreement; and
(b) Pays funds for the funeral or burial of the insured.

(8) "Ultimate 1980 CSO Table", means a mortality table, consisting of separate rates of mortality for male and female lives, with a 10-Year Select Mortality Factors, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, referenced in KRS 304.6-140 and 304.15-342.

Section 2. Minimum Valuation and Nonforfeiture Mortality Standards. (1) For preneed insurance, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for male and female insureds shall be the male Ultimate 1980 CSO Table and the female Ultimate 1980 CSO Table, respectively.

(2) A Merged Gender Ultimate 1980 CSO Table may, at the option of the insurer, be substituted for the male Ultimate 1980 CSO Table or the female Ultimate 1980 CSO Table minimum mortality standard for determining nonforfeiture values.

(3) It shall not be a violation of KRS 304.12-285 for an insurer to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis if:

(a) The insurer establishes, prior to issue of any policy which is to be offered, the conditions under which each type will be marketed; and
(b) The conditions, together with sufficient information to establish that an unfair discriminatory condition will not be created, are filed with the commissioner for approval in accordance with KRS 304.14-120.

Section 3. Transition Rules. (1) For preneed insurance policies issued on or after the effective date of this administrative regulation and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and the minimum standard for nonforfeiture benefits for both male and female insureds.

(2) If an insurer elects to use the 2001 CSO Mortality Table as a minimum standard for any policy issued on or after the effective date of this administrative regulation and before January 1, 2012, the insurer shall provide, as part of the actuarial opinion memorandum required by KRS 304.6-171 submitted in support of the insurer’s asset adequacy testing, an annual written notification to the domiciliary state insurance commissioner. The notification shall include:

(a) A complete list of all preneed policy forms that use the 2001 CSO Mortality Table as a minimum standard;
(b) A certification signed by the appointed actuary stating that the reserve methodology employed by the insurer in determining reserves for the preneed policies after the effective date of this administrative regulation and using the 2001 CSO Mortality Table as a minimum standard, develops adequate reserves. For purposes of this certification, the preneed policies using the 2001 CSO Mortality Table as a minimum standard shall not be aggregated with any other policies; and
(c) Supporting information regarding the adequacy of reserves for preneed insurance policies issued after the effective date of this administrative regulation and using the 2001 CSO Mortality Table as a minimum standard for reserves.

(3) Preneed insurance policies issued on and after January 1, 2012, shall use the Ultimate 1980 CSO Tables in the calculation of minimum nonforfeiture values and minimum reserves.

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

(a) "Ultimate 1980 CSO Table", published in the proceedings of the National Association of Insurance Commissioners, 1984, Vol. 1, pages 402-413;
(b) "Merged Gender Ultimate 1980 CSO Table", published in the proceedings of the National Association of Insurance Commissioners, 1984, Vol. 1, pages 396-400; and
(c) "2001 CSO Mortality Table", published in the proceedings of the National Association of Insurance Commissioners, Second Quarter 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: August 11, 2008
FILED WITH LRC: August 14, 2008 at 4 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0886, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing
(As Amended at ARRS, November 12, 2008)


NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-507, signed June 6, 2009, effective June 15, 2009, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(5) and (7) authorize the executive director to limit the number of continuing education hours carried forward to the subsequent biennium. KRS 304.14-542(5) requires the executive director to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720, Kentucky’s Lifes[et]ead[al] Settlement Law. Pub. L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators. This administrative regulation establishes procedures for approval of agent and Lifes[et]ead[al] settlement broker continuing education courses and obtaining credit for attending continuing education courses.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance; "Executive Director" means the Executive Director of the Office of Insurance;

(2) "Department" means the Department of Insurance; "Office" means the Office of Insurance;

(3) "Provider" means the sponsor of a continuing education course.

Section 2. Continuing Education Course Requirements. (1) A continuing education course shall be offered by a provider approved by the commissioner[executive-director], pursuant to this section:

(a) The application for approval of a provider shall be submitted on the "Provider Application" form incorporated by reference, in 806 KAR 9:340, and

(b) The information shall show that the provider is qualified, through knowledge or experience, to provide prelicensing or continuing education courses and that the provider is properly authorized to charge a course fee, if any.

(2) A continuing education course shall be filed with and approved by the commissioner[executive-director] at least sixty (60) days in advance of advertising unless the commissioner[executive-director], waives the sixty (60) day period.

(b) In determining whether to grant a waiver, the commissioner[executive-director] shall consider whether the failure to file and approve the continuing education course within the time period...
specified in paragraph (a) of this subsection was due to circumstances which would reasonably justify failure to comply.

(3)(a) All applications for approval of a continuing education course shall be submitted on the "Course Approval Application" form incorporated by reference, in 806 KAR 9:340, which [and] shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, in 806 KAR 9:340, and a nonrefundable[as] initial fee of ten (10) dollars [which shall be when paid and shall not be refundable].

(b) notwithstanding the requirements in paragraph (a)(1) of this subsection, application for approval of a continuing education course being offered in more than one (1) state, may be submitted on the Association of Insurance Commissioners' "Uniform Continuing Education Requirements Course Filing Form" incorporated by reference in 806 KAR 9:340.

(c) After review and assessment of the number of credit hours, the commissioner[executive-director] shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010.

(d) A continuing education course shall not be approved until all fees are paid.

(4) The commissioner[executive-director] shall approve a continuing education course if it meets the following requirements:

(a) The continuing education course shall contribute directly, at a professional level, to the competence of the licensee including the following subjects:

1. Insurance, annuities, and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Business environment, management, or organization;
9. Ethics; and
10. Other topics approved by the commissioner[executive-director] which contribute directly at a professional level to the competence of the licensee; and

(b) Course development and presentation:

1. The continuing education course shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;
2. The course shall be developed by persons who are qualified in the subject matter and instructional design;
3. Material[The course content] shall be current, relevant, accurate, and include valid reference materials, graphics, and interactive;
4. The course shall have clearly defined objectives and course content criteria;
5. Each course shall have a written outline and study materials or texts;

[e] Information shall show that the instructors are qualified, through training or experience, to instruct the continuing education course competency and shall be submitted on the "Instructor Approval Application" incorporated by reference, in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, as in 806 KAR 9:340;

[f] The number of participants and physical facilities shall be consistent with the teaching method specified; and

[g][h] All courses shall include some means of evaluating quality.

(5) Continuing education credit shall not be provided for:

(a) Any course used for preparing for taking an examination required pursuant to KRS Chapter 304;
(b) Committee service of professional organizations;
(c) Computer training to develop functional skills;
(d) Motivational or sales training courses; and
(e) Any course not in accordance with Section 2(4) of this administrative regulation.

(f) Any material change in a continuing education course shall be filed with and approved by the commissioner[executive-director] prior to use. The material change shall not be approved until the filing fees are paid in accordance with subsection (3) of this section.

(7) Biennially, providers shall renew approval of continuing education courses and instructors. Providers shall file applicable information with and pay the applicable fee specified in 806 KAR 4:010 to the commissioner[executive-director] prior to June 30 of every number of years.

Section 3. Measurement of Credit Hours. Continuing education courses shall be measured according to course type and calculated in the following manner:

(a) Classroom course. Each credit hour of a continuing education course shall include at least fifty (50) minutes of continuous instruction or participation.

(b) Self-Study Courses. Each credit hour of a continuing education course, completed online or by correspondence shall be calculated in accordance with the National Association of Insurance Commissioners' "Recommended Guidelines for Online Courses."

(c) A continuing education course, regardless of whether it is offered as a classroom course, online course, by correspondence, or self-study, shall not be credited for continuing education by a licensee more than once per continuing education biennium.

(d) Credit hours for self-study courses per continuing education biennium.

(e) A self-study course shall not be approved for continuing education credit of more than twelve (12) credit hours for self-study courses per continuing education biennium.

(f) The continuing education course provider has certified to the commissioner[executive-director] that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;

(3) The continuing education course provider failures to certify to the commissioner[executive-director] that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or

(4) Unethical conduct of a provider or instructor.

Section 5. Product Specific Continuing Education and Training Requirements. (1) Any resident licensee selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.41-420, shall complete eight (8) hours of initial long-term care training and four (4) hours of additional training for each biennial continuing education compliance period.

(2) Any resident insurer licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-268, Section 207.4;

(3) The training requirements in subsections (1) and (2) of this section may apply toward fulfillment of a licensee's continuing education requirement as set forth in KRS 304.2-285 and 304.15-706.01; if the training has been approved as a continuing education course in accordance with Section 2 of this administrative regulation and proof of completion is made in accordance with Section 5 of this administrative regulation.

Section 6. Proof of Completion. (1) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the commissioner[executive-director] the names of all licensees who satisfactorily completed the continuing education course.
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(b) The provider shall maintain the "Continuing Education Course Attendance Register" form, incorporated by reference in 806 KAR 9:340, for at least five (5) years and shall be subject to random audits to ensure compliance with this requirement.

c. The certification of completion required by this section for a classroom course shall be submitted electronically on the "Continuing Education Course Attendance Register" form, incorporated by reference in 806 KAR 9:340, through the Department of Insurance Web site, https://dol.cpr.ky.gov/Kentucky/secure/Eservices/default.aspx

d1. The certification of completion required by this section for a self-study course shall be submitted on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

2. [Which] The provider shall:
   a. Forward the form filed with the Executive Director or shall forward to the licensee for signature, and

(2)(a) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least five (5) years (three (3) years).

(b) The certification required by this subsection shall be on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

(c) The provider of the continuing education course shall retain a copy of the certificate for at least five (5) years (three (3) years).

(d) Providers of continuing education courses and licensees shall make available to the Commission or its designee copies of these certificates upon the request of the Commission or its designee.

(3) Pursuant to KRS 304.9-295(2) and (9), every licensee shall be responsible for ensuring that the licensee's [his or her] continuing education certificates of completion are timely filed with the department even if the provider does not fulfill its responsibilities under this administrative regulation.

(4)(a) At least six (6) hours of total credit earned per bimonth shall be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed.

(b) At least three (3) hours of total credit earned per bimonth shall be in ethics.

(c) Hours may be classroom, self-study, or a combination of both.

(5) Each self-study course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the bimonth.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education bimonth.

Section 7. Cancellation and Reinstatement of Licenses. (1) Proof of fulfillment of a resident licensee's continuing education requirement shall be received in connection with license renewal in accordance with KRS 304.9-260 and 304.9-295.

(2) If the department [office] does not receive proof of the fulfillment of a licensee's continuing education requirements [for a resident licensee] on or before the deadline pursuant to KRS 304.9-295 [July 30 in even-numbered years, and for a nonresident nonresident or a nonresidential continuing education course, the continuing education course, the licensing year], the recommendation [executive director] shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Credit Certificate of Completion" Form incorporated by reference, in 806 KAR 9:340, or the "Continuing Education Certificate of Completion" Form incorporated by reference, in 806 KAR 9:340, is not received by the department [office] on or before the deadline in accordance with KRS 304.9-295.

304.9-295. (3)(9) Within twelve (12) months after a license is terminated for failing to submit certification of continuing education, the license may be reissued if the licensee:

(a) Satisfies the continuing education requirements;

(b) Submits a new application with required attachments for a license [held] and

(c) Submits the applicable fees.

304.9-295. If the continuation education deficiency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 8. Requests for an Extension of Time [7. Affidavit for Exemption] from Continuing Education. (1) Use of a supporting affidavit that the agent licensee is maintained for the sole purpose of receiving renewals or deferred commissions for any other reason, including an extension for completion of continuing education requirements as a continuing education bimonth, shall be a violation of KRS 304.9-295 and shall subject the agent to suspension or revocation of the agent license.

(2) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw (give-up) the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education bimonth;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

(3) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any other reason, including an extension for completion of continuing education requirements for a continuing education bimonth, shall be a violation of KRS 304.9-295 and shall subject the agent to suspension or revocation of the agent license.

(4) The agents of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-295(3), by filing with the department, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," incorporated by reference in 806 KAR 9:340; or

(b) Request a waiver for continuing education requirements in accordance with KRS 304.9-295.

Section 9. [8] Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

Section 10. Incorporation by reference. (1) "Recommended Guidelines for Online Courses" (2005 National Association of Insurance Commissioners), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
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PUBLIC PROTECTION CABINET
Department of Insurance
Life Insurance Division
(As Amended at ARRS, November 12, 2008)

806 KAR 15:080. Paid-up life insurance policies.

RELATES TO: KRS 304.15-175
STATUTORY AUTHORITY: KRS 304.2-110(1)
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(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.59-152. This administrative regulation establishes standards for the submission of a notice of a paid-up life insurance policy by an insurer to the Department of Insurance. This administrative regulation also establishes the process for requesting information regarding a paid-up life insurance policy.

Section 1. Definitions. (1) "Commissioner" means the commissioner of the Department of Insurance.
(2) "Department" means the Department of Insurance.
(3) "Paid-up policy" means a whole life insurance policy under which all premiums have already been paid, with no further premium payment due, including a life insurance policy where the policy is in the reduced paid-up nonforfeiture option.
(4) "Universal life insurance" means a life insurance policy in which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy.
(5) "Variable life insurance" means a life insurance policy under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

Section 2. Exemptions. This administrative regulation shall not apply to:
(1) Annuities;
(2) Credit life insurance;
(3) Group life insurance;
(4) Term life insurance;
(5) Universal life insurance; and
(6) Variable life insurance.

Section 3. Timeframe for Submission of Notice. Beginning August 30, 2008, and monthly thereafter, insurers shall provide notice to the Department, in accordance with Sections 4 and 5 of this administrative regulation, of all paid-up policies issued in Kentucky pursuant to KRS 304.15-175(1) [within thirty (30) days of completion of all policy payments].

Section 4. Methods of Filing. (1) Notice of a paid-up policy shall be submitted by an insurer to the Department electronically through:
(a) eServices via the department’s Web site, http://insurance.ky.gov; or
(b) A file transfer protocol, incorporating the information included in Section 5 of this administrative regulation.
(2) To utilize the option of submitting notice through a file transfer protocol, an insurer shall send a written letter to the department requesting to initiate this service.

Section 5. Information required on the Notice. (1) The following information regarding a paid-up policy shall be submitted to the department by an insurer:
(a) The insurer’s identification number assigned by the National Association of Insurance Commissioners;
(b) The information required by KRS 304.175(1) [name of the policyholder;
(c) The last known address of the policyholder;
(d) The policy number;
(e) The date the policy was paid-up;
(f) The name of the insured; and
(g) The insured’s date of birth.
(2) The following information regarding a paid-up policy may be submitted to the department by an insurer:
(a) The policyholder’s Social Security number;
(b) The policyholder’s date of birth;
(c) The name of all of the beneficiaries named; and
(d) The relationship of the beneficiary to the policyholder.

Section 6. Request for Policy Information Requirements. (1) A request for information on a paid-up policy shall be made by submitting a Request for Paid-Up Policy Information, PUL-1, in writing to the Department. The request shall be made by one of the following individuals:
(a) The policyholder;
(b) The beneficiary; or
(c) An individual with legal authority to obtain insurance-related information on the insured.
(2) The written request shall include the following documentation:
(a) If the insured is deceased:
(1) A certified copy of the death certificate for the insured; and
(b) A document identifying the requestor as a policyholder or beneficiary under the paid-up policy; or
(b) A court order permitting the requestor to obtain insurance-related information on the insured.
(c) If the insured is not deceased:
(1) A document identifying the requestor as the policyholder; or
(2) A copy of the power of attorney allowing the requestor to obtain insurance-related information regarding the insured.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department’s Internet Web site at: http://insurance.ky.gov

SHARON P. CLARK, Commissioner
ROGER D. VANCE, Secretary
APPROVED BY AGENCY: August 11, 2008
FILED WITH LRC: August 14, 2008 at 4 p.m.
CONTACT PERSON: DUWAN WASSON, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40625, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Kentucky Access
(As Amended at ARRS, November 12, 2008)

806 KAR 17:555. ICARE Program requirements.

STATUTORY AUTHORITY: KRS 304.2-110(1), 2008 Ky Acts ch. 127, Part XII, secs. 2(5) and 6(2) [2008 Ky Acts ch. 282, Part XXIII, secs. 2(5) and 6(2)]
NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner 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. 2008 Ky Acts ch. 127, Part XII, sec. 2(5) [2008 Ky Acts ch. 282, Part XXIII, sec. 2(6)] requires the office to establish guidelines for determination of preference for employer.
groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2008 Ky Acts ch. 127, Part XII, sec. 4(9) provides that a health plan make available to subscribers the availability of a health insurance purchasing program as authorized in 42 U.S.C. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) *Agent* is defined in KRS 304.9-020(1).
(2) *Basic health benefit plan* is defined in KRS 304.17A-005(4).
(3) *Consumer-driven health plan* is defined in 2008 Ky Acts ch. 127, Part XII, sec. 11(1)(2006 Ky Acts ch. 252, Part XXIII, see 3(3)).
(4) *Department* means the Department of Insurance.
(5) *Eligible employer* is defined in 2008 Ky Acts ch. 127, Part XII, sec. 11(3)(2006 Ky Acts ch. 252, Part XXIII, see 3(9)).
(6) *Eligible employer* is defined in 2008 Ky Acts ch. 127, Part XII, sec. 11(2)(2006 Ky Acts ch. 252, Part XXIII, see 3(6)).
(7) *Employee* means an employee that participates in a health benefit plan.
(8) *Enrolled health benefit plan* means a health benefit plan for which:
(a) is a basic or consumer-driven health benefit plan; and
(b) includes all benefits established in KRS Chapter 304 sub-title 17A.
(9) *Health benefit plan* is defined in KRS 304.17A-005(2).
(10) *Health care incentive payment* means a payment as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(10) and 4(1)(2006 Ky Acts ch. 252, Part XXIII, see 3(4)).
(11) *Health risk assessment* is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(14) (2006 Ky Acts ch. 252, Part XXIII, see 3(4)).
(12) *ICARE Program* means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2008 Ky Acts ch. 127, Part XII, sec. 2(1)(2006 Ky Acts ch. 252, Part XXIII, see 3(4)).
(13) *ICARE Program participating insurer* is defined in 2008 Ky Acts ch. 127, Part XII, sec. 1(6)(2006 Ky Acts ch. 252, Part XXIII, see 3(6)).
(14) *ICARE Program year* means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.
(15) *Office* is defined in 2008 Ky Acts ch. 252, Part XXIII, see 3(7) and KRS 304.1-050(2).
(16) *Qualified health benefit plan* is defined in 2006 Ky Acts ch. 127, Part XII, sec. 1(8)(2006 Ky Acts ch. 252, Part XXIII, see 3(6)).
(17) *Small group* is defined in KRS 304 17A-005(4).

Section 2. Health Risk Assessment. An ICARE Program participating insurer shall:
(1) Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the department[office], conduct a health risk assessment as established in 2008 Ky Acts ch. 127, Part XII, sec. 3(9)(2006 Ky Acts ch. 252, Part XXIII, see 3(4)) for each eligible employee of the employer; and
(2) Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section, and pursuant to 2008 Ky Acts ch. 127, Part XII, sec. 3(4)(2006 Ky Acts ch. 252, Part XXIII, see 3(4)), offer the following:
(a) A wellness program;
(b) Case management services; and
(c) Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the department[office] for use in the small group or employer-organized association market shall be deemed quali-
Information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.
(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the ICARE Office, a report of the average annual premium of each ICARE Program participating employer. The annual report shall:
(a) Include for each ICARE Program participating employer:
1. ICARE Program Identification number;
2. Name of the employer group; and
3. Average annual premium paid; and
(b) Be submitted in a format as established in the form, ICARE Report-1:
1. No later than February 1, for the previous calendar year; and
2. In an electronic or written format.
Section 8. Annual Department[Office] Review of ICARE Books and Records. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:
(1) 2008 Ky Acts ch 127, Part XII, secs. 1 through 8; 2008 Ky Acts ch 262, Part XIX, secs. 1 through 6; 800 KAR 17:540, 800 KAR 17:545 and this administrative regulation; and
(2) The representations made by the employer on its application for participation in the ICARE Program.
(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] Web site at http://dol.ppry.ky.gov/kentucky/.

JOHN BURKOLDER, Acting Commissioner
ROBERT VANCE, Secretary
APPROVED BY AGENCY: July 2, 2008
FILED WITH LRC: July 15, 2008 at 4 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(As Amended at AFRS, November 12, 2008)
RELATES TO: KRS 205.520, 205.637, 216.380, 42 C.F.R. 400.203, 413.70, 440.2, 440.200(a), 447.321, 42 U.S.C. 1395(b), 1396(e)(6)(D)
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital [outpatient] services.
Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.
(2) "Department" means the Department for Medicaid Services or its designee.
(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.
(4) "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).
(5)(4) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet F-3, Part III, Page 12 column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.
Section 2. In-State Outpatient Hospital Service Reimbursement. (1) Except for critical access hospital services and outpatient hospital laboratory services, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.
(2) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.
(3) Except as described in subsection (4) of this section:
(a) Upon receipt of each state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to ninety-five (95) percent-twenty-five (25) percent (ninety-five (95) percent) of the facility's total outpatient costs incurred during the hospital's fiscal year.
(b) Upon receipt of and reviewing an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall settle final reimbursement, excluding laboratory services, to the facility equal to ninety-five (95) percent-twenty-five (25) percent [ninety-six (96) percent] of the facility's total outpatient costs incurred in the corresponding fiscal year.
(c) [Under-reimbursement shall] The department's total reimbursement for outpatient hospital services shall not exceed the aggregate limit established in 42 C.F.R. 447.321.
(d) If projections indicate for a given fiscal state year that reimbursement for outpatient hospital services at ninety-five (95) percent-twenty-five (25) percent (ninety-six [96]) percent of the facility's total outpatient costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce the final outpatient hospital service reimbursement to the facility to a percent of costs which will result in the total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.
(e) In accordance with 42 U.S.C. 1396-r(6)(A), a hospital shall include the corresponding healthcare common procedure coding (HCPCS) code in [When billing a revenue code of 250 through 261 or 634 through 636 for an outpatient hospital service.
Section 3. Out-State Outpatient Hospital Service Reimbursement. Excluding services provided in a critical access hospital and laboratory services, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be ninety-five (95) percent-twenty-five (25) percent (ninety-six [96]) percent of the average in-state outpatient hospital cost-to-charge ratio.
Section 4. Critical Access Hospital Outpatient Service Reimbursement. (1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).
(2) A critical access hospital shall comply with the cost reporting requirements established in Section 2 of this administrative regulation.
Section 5. Outpatient Hospital Laboratory Service Reimbursement. (1) The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:
(a) At the Medicare-established technical component rate.

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for the service. In accordance with 907 KAR 1:029 if a Medicare-established component rate (i)(1)(A) rate equal to sixty-two and one-half (62) percent of the Medicare fee schedule rate if a Medicare rate exists for the service; or
(b)(2): By multiplying the facility's current outpatient cost-to-charge rate by its billed laboratory charges if no Medicare rate exists for the service.
(2) Laboratory service reimbursement. In accordance with subsection (1) of this section, shall be:
(a) Final and
(b) Not subject to cost.
(3) An outpatient laboratory hospital laboratory service shall be reimbursed in accordance with this section regardless of whether the service is performed in an emergency room setting or in a non-emergency room setting.

Section 6. Cost Reporting Requirements. (1) An in-state outpa-
tient hospital participating in the Medicaid program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECRF), the Supplemental Medi-
caid Schedule KMAP-1 and the Supplemental Medicaid Schedule KMAP-6 (as follows):
(a) A cost report shall be submitted:
1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.
(b) Except as provided in subparagraph 1 or 2 of this para-
graph (as follows), the department shall not grant a cost report submittal extension.
1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare it shall simultaneously submit a copy of the cost report to the department.
2. If a catastrophic circumstance exists, as determined by the department, the department shall grant a thirty (30) day extension.
(2) If a cost report submittal date lapsed and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.
(3) If a cost report indicates payment is due by a hospital to the department, the hospital, as requester, shall submit the amount due or submit a payment plan request with the cost report.
(4) If a cost report indicates a payment is due by the hospital to the department and the hospital has not remitted the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or grants a request for a payment plan.
(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.
(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.
(7) Within seventy (70) days of receipt from the Medicare Inter-
mediate, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjust-
ments.
8(a) If it is determined that an additional payment is due by a hospital after a final determination of cost has been made by the department, the additional payment shall be due by a hospital to the department within sixty (60) days after notification.
(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 7. Federal Financial Participation. A provision estab-
lished in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision.

Section 8. Appeals. A hospital may appeal a decision by the department regarding the application of this administra-
tive regulation in accordance with 907 KAR 1:071.

Section 9. [8] Incorporation By Reference. (1) The following
materials are incorporated by reference:
(a) "Supplemental Worksheet E-3, Part III, Page 12, May 2004
edition;"
(b) "Supplemental Medicaid Schedule KMAP-1", May 2004
edition; and
(c) "Supplemental Medicaid Schedule KMAP-4", May 2004
edition; and
(d) "Supplemental Medicaid Schedule KMAP-6", January 2007
dition.
(2) This material [The material listed in subsection (1) of this
section may be inspected, copied, or obtained, subject to applica-
tion of copyright law, at the Department for Medicaid Services, 275
East Main Street, Frankfort, Kentucky 40601, Monday through
Friday 9 a.m. to 4:30 p.m.
(6) "Current procedural terminology-code" or "CPT-code" or
"HCPCS" means a code used for the reporting of medical services or proce-
dures using the current procedural terminology developed by the
American Medical Association.
(3) "Department" means the Department for Medicaid Services
or its designee.
(4) "Healthcare common procedure coding system" or
"HCPCS" means a collection of codes acknowledged by the Cer-
tors for Medicare and Medicaid Services that represent proce-
dures and services.
(6) "Level 1-service" means services billed using CPT-code
99281.
(6) "Level 2-service" means services billed using CPT-code
99282 or 99283.
(6) "Level 3-service" means services billed using CPT-codes
99284, 99285, 99289, or 99292.
(6) "Outpatient-charge-rate" means the ratio determined by divid-
ing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 3, line 27 of the cost report by the charges reported on column 3, line 20 of the same schedule.
(6) "Revenue-code" means a provider-assigned revenue code for each cost center for which a separate charge is billed.
(6) "Thago" means a medical screening and assessment billed using revenue code 46.

Section 2. Outpatient Hospital Services. (1) Except for a critical access hospital, for services provided on or after August 4, 2003, the Department for Medicaid Services shall reimburse a participat-
ing in-state hospital for outpatient services in accordance with this subsection.
(6) For the following procedure, the rates shall be as follows:
1. Cardiac catheterization lab
   a. Unilateral—$1,478; or
   b. Bilateral—$1,770.
2. Computed tomography scan—$479.
3. Ultrasound—$2,373.
4. Magnetic resonance imaging—$593.
5. Observation room—$458, and
6. Ultrasound—$177.
(b) If multiple services listed in paragraph (a) of this sub-
section are provided, each service shall receive the corresponding rate established in paragraph (a) of this subsection.
(c) The department shall utilize the 1999 Medicare-ambulatory surgical center groups to reimburse for outpatient surgery. The following chart establishes the reimbursement rates for each correspond-
ing surgical group:

<table>
<thead>
<tr>
<th>Ambulatory Surgical Center Group</th>
<th>Reimbursement Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>$927</td>
</tr>
<tr>
<td>Group 2</td>
<td>$1,104</td>
</tr>
<tr>
<td>Group 3</td>
<td>$1,104</td>
</tr>
<tr>
<td>Group 4</td>
<td>$1,104</td>
</tr>
<tr>
<td>Group 5</td>
<td>$1,104</td>
</tr>
<tr>
<td>Group 6</td>
<td>$1,104</td>
</tr>
<tr>
<td>Group 7</td>
<td>$1,104</td>
</tr>
</tbody>
</table>
(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.

(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection shall be paid.

(f) Except for services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b), (c), (d), and (e) of this subsection.

(g) The following shall be reimbursed on an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:

<table>
<thead>
<tr>
<th>Service</th>
<th>Revenue Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pharmacy</td>
<td>260, 261, 262, 264, 266, 268, 269, 281, 634, 636, 656</td>
</tr>
<tr>
<td>X-ray</td>
<td>200, 201, 202, 203, 204, 206, 209, 290</td>
</tr>
<tr>
<td>Supplies</td>
<td>270, 271, 272, 274, 275, 261, 262, 263</td>
</tr>
<tr>
<td>EKG/ECG and</td>
<td>419, 410, 412, 420, 421, 422, 423, 424</td>
</tr>
<tr>
<td>Therapeutic Services</td>
<td>440, 441, 442, 443, 446, 470, 471, 472, 480, 482, 510, 512, 516, 517, 700, 701, 732, 740, 901, 922, 940, 942, 943</td>
</tr>
<tr>
<td>Room and</td>
<td>280, 290, 370, 371, 372, 374, 700, 710, 750, 761, 800, 861, 892, 893, 894</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>821, 831, 841</td>
</tr>
<tr>
<td>Dialysis</td>
<td>330, 331, 332, 333, 334, 335</td>
</tr>
</tbody>
</table>

(3) Except for services in subsection (1)(g) of this section, beginning August 4, 2003, an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (2)(a) of this section.

(4) Services listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals, by billed charges.

(5) An outpatient hospital-laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 407-KAR-1 029.

(b) An outpatient hospital-laboratory service with an established Medicare rate shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.

(6) A critical access hospital shall be reimbursed on an interim basis.

(a) By multiplying charges by the lesser of

1. The Medicare cost-to-charge ratio listed for the Medicare fiscal intermediary at the time of service; or
2. The Medicaid outpatient cost-to-charge ratio.

(b) For a laboratory service in accordance with the Medicare fee schedule.

(c) With a settlement to cost at the end of the year.

(7) A hospital providing outpatient services shall be required to submit a cost report within five (5) months after the hospital’s fiscal year-end.

(8) Failure to provide a cost report within the timeframe established in subsection 7 of this section shall result in a suspension of future payment until the cost report is received by the department.

(9) If a cost report indicates payment is due, a provider shall remit payment in full or a request for a payment plan with the cost report.

(10) If a cost report indicates a payment is due and the hospital fails to remit a payment or request for a payment plan, the department shall suspend future payment to the hospital.

(11) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(12) If it is determined that an additional payment is due after the final determination of cost has been made by the department, the additional payment shall be due sixty (60) days after notification.

(13) If a hospital fails to submit an additional payment in accordance with subsection 12 of this section, the department shall suspend future payment to the hospital.

Section 3 - Supplemental Payment. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a non-state government hospital, as defined in 42 C.F.R. 447.321(c), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.

(2) A payment made under this section shall:

(a) Not be subject to the cost settlement provisions established in Section 2 of this administrative regulation; and

(b) Apply to a service provided on or after April 2, 2001.

Section 4 - In-State and Out-Of-State Emergency Room Services. (1) Services provided in an emergency room shall be reimbursed as follows:

(a) The in-state service reimbursement rate shall be twenty-five (25) dollars.

(b) The level 1 service reimbursement rate shall be eighty-two (82) dollars.

(c) The level 2 service reimbursement rate shall be one hundred sixty-four (164) dollars.

(d) The level 3 service reimbursement rate shall be two hundred sixty-four (264) dollars.

(e) In addition to the rate paid for services listed in subsection (1) of this section, the following shall be paid at the following rates:

1. Cardiac catheterization lab
   - Unilateral $1,476, or
   - Bilateral $1,770
2. Computed tomography scan $479
3. Lithotripsy $3,757
4. Magnetic resonance imaging $653
5. Observation room $465
6. Ultrasound $127

(f) Multiple services listed in subsection (2) of this section provided, each service shall receive the corresponding rate established in subsection (2) of this section.

(2) Except as listed in subsection (6) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(1)(g) of this administrative regulation.

(3) A thrombolytic agent shall be reimbursed at the hospital’s acquisition cost.

(4) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(6) of this administrative regulation.

Section 6 - Appeals. A hospital may appeal a decision as permitted by 407-KAR-1 029.

Section 6 - Incorporation by Reference. (1) "Supplemental Worksheet E-3, Part III, Page 12, November 1692 edition" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 276 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANE MILLER, Secretary
APPROVED BY AGENCY: September 15, 2008
FILED WITH LRC: September 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospitals and Provider Operations
(As Amended at ARRS, November 12, 2008)

907 KAR 1:925. Diagnosis-related group (DRG) Inpatient hospital reimbursement.

RELATES TO: KRS 138.140, 205.610(16), 205.655, 205.637, 205.638, 205.639, 205.640, 205.641, 216.360, 42 C.F.R. Parts 412, 413, 440.10, 440.140, [447.204(e)], 447.250-447.280, 42 U.S.C. 1395(l), 1395w(d)(5)(F), x(mm), 1396a, 1396b, 1396d, 1396r-4


NECESSITY, FUNCTION, AND CONFORMITY. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.652(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 and [1] 205.638[ and 2006 Ky Acts ch.262]

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

(2) "Adjustment factor" means the factor by which non-neonatal care relative weights shall be reduced to offset the expenditure pool adjustment necessary to enhance neonatal care relative weights.

(3) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(4) "Base rate" means the per discharge hospital-specific DRG rate for an acute care hospital that is multiplied by the relative weight to calculate the DRG base payment.

(5) "Base year" means the state fiscal year period used to establish DRG rates.

(6) "Base year Medicare rate component" means Medicare inpatient prospective payment system rate component in effect on October 1 during the base year as listed in the CMS IPPS Pnner 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, which is the wage index published by CMS in the Federal Register, [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 Pnner 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 the 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 hospital costs extracted from the Medicare cost report corresponding to the hospital full fiscal year falling within the base year claims date period.

(13) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(14) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1.110 and [14] designated as a critical access hospital by the department.

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

(16) "Diagnostic categories" means the diagnostic classifications containing one or more DRGs used by Medicare programs, assigned in the base year with modifications established in Section 2(15) of this administrative regulation.

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

(18) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

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

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

(21) "Enhanced neonatal care relative weights" 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 Medicaid allowable costs in aggregate by category.

(22) "Federal financial participation" is defined in 42 C.F.R. 400.203 [means funding from the Centers for Medicare and Medicaid Services].

(23) "Fixed loss cost threshold" means the amount, equal to $29,003, 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) "GTP" means Global Insight, Incorporated.

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

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

(a) Is licensed for a minimum of twenty-four (24) neonatal level II beds;

(b) Has a minimum of 1,500 Medicaid neonatal level II patient days per year;

(c) Has a gestational age lower limit of twenty-seven (27) weeks;

and

(d) Has a full-time neonatologist on staff.

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

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

(30) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time based on changes in the CMS Input Price Index.

(31) "Intra-hospital 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 care" or "Level I DRG" means care provided to newborn infants of a more intensive nature than the usual nursing care provided in newborn care units, on the basis of physicians' orders and approved nursing care plans, which are assigned to DRGs 385-390. "Level I" 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 physician's orders and approved nursing care plans.

(33) "Level II neonatal center" means a facility with a licensed level II bed which provides specialty care (DRGs 679-680) for infants which includes monitoring for apnea spells, incubator or other respiratory assistance to maintain the infant's body temperature, and feeding assistance.

(34) "Level III neonatal center" means a facility with a licensed level III bed which provides specialty care (DRGs 685-690) of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.

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

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

(37) "Medical short stay" means the difference between a provider's allowable costs 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 and allowable 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 redetermine base rates, DRG relative weights, per diem rates, and other applicable components of the payment methodology (rated) 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 paid under the DRG methodology relative to the average resources required for all DRG (relevant) discharges in the state paid under the DRG methodology for the same time period.

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

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

(50) "State university teaching hospital" means:
   (a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or
   (b) A hospital:
      1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and
      2. That does not possess only a residency program or rotation agreement.

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

(52) "Trending factor" means the inflation factor as applied to that period of time between the midpoint of the base year and the midpoint [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 state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

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

(55) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(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 an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1) An in-state acute care hospital shall be paid for an inpatient acute care service on a fully-prospective per discharge basis.

(2) For an inpatient acute care service in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:
   (a) A DRG base payment;
   (b) If applicable, a high volume per diem payment; and
   (c) If applicable, a cost outlier payment amount.

(3) (a) A DRG shall be based on the Medicare grouper in effect in the Medicare inpatient prospective payment system at the time of rebasing.

   (b) For a rate effective June 16, 2008 [upon the effective date of this administrative regulation], the department shall assign to the base year claims data, DRG classifications from Medicare grouper version twenty-four (24) effective in the Medicare inpatient prospective payment system as of October 1, 2006.

   (4) A DRG base payment shall be calculated for a discharge by multiplying the hospital specific base rate by the DRG relative weight.

   (5) (a) The department shall determine a base rate by calculating a case mix, outlier payment and budget neutrality adjusted cost per discharge for each in-state acute care hospital as described in subsections (5) through (10) of this section of this administrative regulation.

   (b) A hospital specific cost per discharge used to calculate a base rate shall be based on base year inpatient paid claims data.

   (c) For a rate effective June 16, 2008 [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.

   (d) 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.

   (e) 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 Medicare Cost Report 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>11</td>
<td>Routine Days</td>
<td>25</td>
</tr>
<tr>
<td>2</td>
<td>Intensive Days</td>
<td>28, 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, 66, 67</td>
</tr>
<tr>
<td>5</td>
<td>Therapy services exclude</td>
<td>50, 51, 52</td>
</tr>
</tbody>
</table>

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(7)(a) For a hospital with an intern or resident reported on its Medicare cost report, the department shall calculate the difference between the costs of interns and residents before and after the calculation 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 to-cost-charge ratio.

(c) For an in-state acute care hospital, the department shall compute the number of patient days and total charges from the base year claims data. The department shall exclude from the rate calculation:

(a) Claims paid under a managed care program;

(b) Claims for rehabilitation and psychiatric discharges reimbursed on a per diem basis;

(c) Transplant claims;

(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 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 Medicaid allowable 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 adjustment.

(b) The hospital's case mix index shall be equal to the average of its DRG relative weights for acute care services for base year Medicaid discharges referenced in subsection (8) of this section of this administrative regulation.

(c) A hospital's case mix adjusted cost per discharge shall be multiplied by an initial budget neutrality factor.

2. The initial budget neutrality factor for a rate shall be 0.7065 [0.6969] 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).

(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 1.0522 (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, except as excluded in paragraph (b) of this subsection, to an in-state acute care hospital with high Medicaid volume for base year covered Medicaid days referenced in subsection (6) of this section of this administrative regulation.

(b) The high volume per diem criteria shall be based on the number of Kentucky Medicaid days or the hospital's Kentucky Medicaid utilization percentage.

(c) A high volume per diem payment shall be made in the form of a per diem add-on amount in addition to the DRG base payment rate encompassing the DRG average length-of-stay associated with the claim's DRG classification.

(d) The department shall determine a per diem payment associated with Medicaid days based criteria separately from a per diem payment associated with Medicaid utilization-based criteria.

2. If a hospital qualifies for a high volume per diem payment under both the Medicaid days-based criteria and the Medicaid utilization-based criteria, the department shall pay the higher of the two add-on per diem amounts.

(e) The department shall pay the indicated high volume per diem payment if either the base year covered Kentucky Medicaid inpatient days or Kentucky Medicaid inpatient days' utilization percent meet the criteria established in Table 2 below.

<table>
<thead>
<tr>
<th>Table 2. High Volume Adjustment Eligibility Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kentucky Medicaid Inpatient Days</td>
</tr>
<tr>
<td>Days Range</td>
</tr>
<tr>
<td>------------</td>
</tr>
<tr>
<td>0 - 3,499</td>
</tr>
<tr>
<td>3,500 - 4,499</td>
</tr>
<tr>
<td>4,500 - 5,999</td>
</tr>
<tr>
<td>6,000 - 7,399</td>
</tr>
<tr>
<td>7,400 - 10,999</td>
</tr>
<tr>
<td>11,000 - 19,999</td>
</tr>
<tr>
<td>20,000 and above</td>
</tr>
<tr>
<td>4,600 - 7,499</td>
</tr>
<tr>
<td>7,400 - 40,000</td>
</tr>
<tr>
<td>4,000 - 9,999</td>
</tr>
<tr>
<td>20,000 and above</td>
</tr>
</tbody>
</table>

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

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

(h) The department shall not make a high volume per diem payment for a level I neonatal care, level II neonatal center, or level III neonatal center claim.

2. A level I neonatal care, level II neonatal center, or level III neonatal center claim.
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III neonatal center claim shall be included in a hospital's high volume adjustment eligibility criteria calculation established in paragraph (e) - Table 2 - of this section.

(13)(a) The department shall make an additional cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier payment in the high volume adjustment criteria.
(b) A cost outlier shall be subject to QIO review and approval.
(c) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.
(d) The department shall calculate the estimated cost of a discharge, for purposes of comparing the discharge cost to the outlier threshold, by multiplying the sum of the hospital specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.
2. A Medicare operating or capital-related cost-to-charge ratio shall be extracted from the CMS IPPS Prior Claim Process.
(e) The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.
2. The fixed loss cost threshold shall equal $29,000.
(f) A cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

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

(a) Selecting Kentucky base year Medicaid inpatient paid claims, excluding those described in subsection (b) of this section of this administrative regulation;
2. For a rate effective June 16, 2008 (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 re-basing;
2. For a rate effective June 16, 2008 (upon the effective date of this administrative regulation), the department shall assign to the base year claims data the Medicare grouper version 24 DRG classifications which were effective in the Medicare inpatient prospective payment system as of October 1, 2006;
(c) Removing the following claims from the calculation:
1. Claims data for a discharge reimbursed on a per diem basis including:
   a. A psychiatric claim, defined as follows:
      (i) An acute care hospital claim with a psychiatric DRG;
   (ii) A psychiatric distinct part unit claim;
   a. A psychiatric hospital claim;
   b. A rehabilitation claim defined as follows:
      (i) An acute care hospital claim with rehabilitation DRG;
      (ii) A rehabilitation distinct part unit claim;
   a. A rehabilitation hospital claim;
   c. A cmtal access hospital claim;
   a. A long term acute care hospital claim;
   2. A transplant service claim as specified in subsection (21)(b)(8) of this section of this administrative regulation;
   4. A claim for a patient discharged from an out-of-state hospital, and
   4. A claim with total charges equal to zero (0);
   (d) Calculating a relative weight value for a low volume DRG by:
1. Arraying a DRG with less than twenty-five (25) cases in order by the Medicare DRG relative weight in effect in the Medicare Inpatient prospective payment system at the same time as the Medicare DRG grouper version, published in the Federal Register, relied upon for Kentucky DRG classifications; and
2. For a rate effective June 16, 2008 (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) 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 June 16, 2008 (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. For a rate effective June 16, 2008 (upon the effective date of this administrative regulation), the labor related percentage shall equal sixty-two (62) percent and the nonlab 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 discharge;
   (f) Computing an average standardized cost for all DRGs in aggregate for each DRG, excluding statistical outliers;
   (g) Computing DRG relative weight by:
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;
   (h) 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;
   (i) Employing enhanced neonatal care relative weights;
   (j) 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 weight;
   (k) 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 the newborn's stay;
(b) Establish a unique set of diagnostic categories and relative weights for in-state acute care hospital identified by the department as providing level I neonatal care, level II neonatal center care, or level III neonatal center care [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 care relative weight calculations;
2. The department shall reassess a claim that would have been assigned to a Medicaid DRG 385-390 to a Kentucky-specific:
   a. DRG 675-680 for an in-state acute care hospital with a level II neonatal center, and
   b. DRG 685-690 for an in-state acute care hospital with a level III neonatal center;
3. The department shall assign a DRG 385-390 for a neonatal claim from a hospital which does not operate a level II or III neonatal center; and
4. The department shall compute a separate relative weight for a level II, or III neonatal intensity care unit (NICU) neonatal
DRG;  
(b) The department shall use base year claims from level II 
natal centers, excluding claims from any high intensity level II 
natal center, to calculate relative weights for DRGs 675-680; and 
(c) The department shall use base year claims from level III 
natal centers to calculate relative weights for DRGs 685-690. 
(16) The department shall: 
(a) Exclude in aggregate by category (level I neonatal care, 
level II or III neonatal center care) and not by individual facili-
ties:  
1. A total expenditure for level I neonatal care projected to 
equal 100% of Medicaid allowable cost for the universal rate 
year;  
2. A total expenditure for level II neonatal center care pro-
ejected to equal 100% of Medicaid allowable cost for the 
universal rate year; or  
3. A total expenditure for level III neonatal center care 
projected to equal 100% of Medicaid allowable cost for the 
universal rate year; 
(b) Adjust neonatal care DRG relative weights to result in:  
1. Total expenditures for level I neonatal care projected to 
equal 100% of Medicaid allowable cost for the universal rate 
year;  
2. Total expenditures for level II neonatal center care pro-
ejected to equal 100% of Medicaid allowable cost for the 
universal rate year; or  
3. Total expenditures for level III neonatal center care pro-
jecte d to equal 100% of Medicaid allowable cost for the 
universal rate year; and  
(c) Not cost settle reimbursement referenced in this sub-
section, (expend in aggregate by category (level I, II, or III neo-
natal 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) Hospital which does not operate a level II or III neonatal 
care, for level I neonatal care at the statewide average Medi-
caid allowable cost per level I DRG [Level I neonatal cen-
ter care at the average cost per DRG of all level I neonatal 
care centers];  
(b) Level II neonatal center for level II neonatal care at the 
average Medicaid allowable cost per DRG of all level II 
natal center care;  
(c) Level III neonatal center for level III neonatal care at the 
average Medicaid allowable cost per DRG of all level III 
natal centers. 
(18) If a patient is transferred to or from another hospital, the 
department shall make a transfer payment to the transferring hos-

tial if the 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 reimburse-
ment amount.  
1. The department shall calculate an average daily rate by 
dividing the DRG base payment by the statewide Medicaid geome-
tric 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 subsection (2) of this section (Sec-
tion 242 of the administrative regulations), the department shall 
  pay the hospital the applicable per diem add-on for the DRG aver-
  age 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 depart-
ment shall reimburse the DRG base payment, and, if applicable, a 
high volume per diem add-on amount and a cost outlier payment 
amount. 
(19) The department shall treat a transfer from an acute care 
hospital to a qualifying postacute care facility for selected DRGs in 
accordance with paragraph (b) of this subsection as a postacute 
care transfer. 
(a) The following shall qualify as a postacute care setting:  
1. A psychiatric, rehabilitation, children's, long-term, or cancer 
hospital;  
2. A skilled nursing facility; or  
3. A home health agency. 
(b) A DRG eligible for a postacute care transfer 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 pay-
ment shall receive sixty (60) percent of the full DRG payment plus 
the average daily rate for the first day of the stay and fifty (50) per-
cent of the average daily rate for the remaining days of the stay, up 
to the full DRG base payment. 
3. A DRG that is referenced in paragraph (b) of this sub-
section and not referenced in subparagraph 2 of this para-
graph. (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 al-
lowed divided by the statewide Medicaid geometric mean length of 
stay for a patient's DRG classification. 
(20) The department shall reimburse for an intrahospital trans-
fer to or from an acute care bed to or from a rehabilitation or psy-
chiatric distinct part unit: 
(a) The full DRG base payment allowed; and  
(b) The facility-specific distinct part unit per diem rate, in ac-
cordance with 907 KAR 1:815, for each day the patient remains 
in the distinct part unit. 
(21) (a) The department shall reimburse for a kidney, cornea, 
pancreas, or kidney and pancreas transplant on a prospective per 
discharge method according to the patient's DRG classification. 
(b) A transplant not referenced in paragraph (a) of this subsec-
tion, shall be reimbursed in accordance with 907 KAR 1:350. 
(22) The department shall adjust the non-neonatal care 
DRGs to result in the aggregate universal rate year reim-
bursement for all services (non-neonatal and neonatal) to 
equal the aggregate base year reimbursement for all services 
(non-neonatal and neonatal) inflated by the trending factor. 
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 
daily 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, pur-
suant to 42 C.F.R. 447.291(e) 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 inter 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 inter and resident amount or the Medicare national average amount shall be selected;
3. The selected per inter 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 shall be the estimated [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 medical education cost per day amount;
5. The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program, and
6. Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

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

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

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

(4) If the sum of all the acute care hospitals’ estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals’ adjusted estimated payments under the prior year’s reimbursement methodology, each hospital’s DRG base rate 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 2.04(14) 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 [each]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 required by this subsection follows:

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

(b) Except as provided in subparagraph 1 or 2 of this paragraph[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 lapse and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

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

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

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

(a) A cost associated with a political contribution;
(b)[1] 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 successful or unsuccessful lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court.

(c) 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, subject to the limitations of subparagraphs 1 and 2 of this paragraph.

2.[3] A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

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

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

3. [The] Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an 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 GIO.

(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, and except for Vanderbilt Medical Center, for inpatient care:
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;

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

(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 Medicaid 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;

(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 17:05.

(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) The department shall 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 between actual cost and submitted costs 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.

(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 sixty (60) days of receiving Medicaid certification.

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

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

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

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

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

(d) Compute on a weighted average the rate of increase controls, prorated 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;

1. Ended as the day before the merger within five (5) months of the end of the hospital's fiscal year end; and
2. A cost report for the period

(3) In the event of a merger during the fiscal year end of the merged entity, [shall also be filed with the department] in accordance with Section 19 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. Department reimbursement for Inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 20. 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 1:571.

Section 21. [Repealed] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Medicaid Schedule KMAP-1*"; January 2007 edition;


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

ELIZABETH A. JOHNSON, Commissioner
JANE MILLER, Secretary
APPROVED BY AGENCY: October 15, 2008
FILED WITH LRC: October 15, 2008 at 10 a.m.
CONTACT PERSON: Jil Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(As Amended at ARRS, November 12, 2008)

907 KAR 3:205. Hemophilia Treatment Reimbursement and Coverage Via the 340B Drug Pricing Program.

RELATES TO: 42 U.S.C. [Chapter 6A-Subchapter II-Part D, subpart vi-a], 256b; 42 U.S.C. 701(a)(2)


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.560(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 remedies. The cabinet is to establish a program that complies with the Medicare drug discount program and does not affect the coverage and reimbursement provisions available under 907 KAR 1:018 and 1:019 for hemophilia treatment provided by a provider of the 340B drug pricing program. The department's pharmacy coverage provision established in 907 KAR 1:019 for hemophilia treatment provided by an entity not participating in the 340B drug pricing program: The department's pharmacy coverage provision established in 907 KAR 1:019 for hemophilia treatment provided by an entity not participating in the 340B drug pricing program shall be in accordance with the department's pharmacy coverage provision established in 907 KAR 1:019 for hemophilia treatment provided by an entity participating in the 340B drug pricing program.

Section 1. Definitions. (1) "340B drug pricing program" means a federally-established drug discount program available for covered entities under 42 U.S.C. 256b(a)(4) [designated entities].

(2) "340B drug pricing program ceiling price" means the highest price allowed by federal law for a drug [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-Sub-
provided by an entity participating in the 340B drug pricing program.
(2) A recipient shall:
(a) Not be restricted to only receive hemophilia treatment via a
340B drug pricing program entity; and
(b) Shall have freedom of choice of provider.
(3) Hemophilia treatment coverage, of hemophilia treatment
provided by an entity not participating in the 340B drug pricing
program, shall be in accordance with the department's pharmacy
coverage provisions established in 907 KAR 1:019.
(4) Hemophilia treatment reimbursement, for hemophilia treat-
ment provided by an entity not participating in the 340B drug pricing
program, shall be in accordance with the department's phar-
macy reimbursement provisions established in 907 KAR 1:018.

Section 6. Federal Financial Participation. A provision estab-
lished in this administrative regulation shall be effective contingent
upon the department's receipt of federal financial participation for
the respective provision.

Section 7. Appeal Rights. A CHDTC may appeal a department
decision associated with this administrative regulation in accor-
dance with 907 KAR 1:671.
(2) A recipient may appeal the department's denial, suspen-
sion, reduction, or termination of a covered drug or decision re-
garding the amount of a drug dispensed based upon an application
of this administrative regulation in accordance with 907 KAR 1:563.

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.
ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(Amended After Comments)

805 KAR 8:090. Criteria for the imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.010(1)(m), 351.1041, 351.175, 351.194, 352.010-352.550, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4)

DEFINITIONS, PROHIBITION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(2) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission’s imposition of civil penalties against licensed premises for violations of Kentucky mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.160(4) requires the imposition of civil monetary penalties and other sanctions for failure to comply with the reporting requirements of KRS 352.160. EO 2008-507 and 2008-531, effective June 16, 2008, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine’s license, and the imposition of civil monetary penalties against a licensed premises.

Section 1. Definitions. (1) “First offense” means the first violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, for failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(2) “Second offense” means the second violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, for failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(3) “Third offense” means the third violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, for failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(4) “Fourth offense” means the fourth violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, for failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(5) “Fifth offense” means the fifth violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, for failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(6) “Subsequent offense” means any violation beyond the third offense by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plans, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(7) “Third offense” means the third violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, for failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, or mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(8) “Unsafe working conditions” means a condition that involves a hazard that:

(a) Can reasonably be expected to cause a miner serious injury or death;

(b) A foreman, superintendent, or mine management was aware of or should have been aware of and

(c) Was allowed to exist, without being corrected or addressed [means a condition that involves a potential hazard that may reasonably be expected to cause a miner to be placed in danger of injury or death].

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

(2)(a) If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1), the commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of the probation, including the suspension or revocation of the mine’s license.

(b) The licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3)(a) The department may file charges against a licensed premises for [any] alleged violation of its probationary terms.

(b) Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety Review Commission, pursuant to 825 KAR 1:020.

(4)(a) If a licensed premises violates [any] mine safety law that [which] places a miner in imminent danger of serious physical injury or death which is a second offense as adjudicated by the Kentucky Mine Safety Review Commission, the commission may suspend or revoke the mine's license for a period of not less than two (2) calendar years, up to and including revocation, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violators and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(5)(a) If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

(b) If the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement.
ment of its mine license at the end of the revocation period. The Office of Mine Safety and Licensing may grant or deny the application.

(c) The office shall grant the application only if the licensed premises is in full compliance with all [any] orders of the Mine Safety Review Commission and KRS 351.

(6)(a) Upon the adjudication by the Mine Safety Review Commission of a third offense by a licensed premises for a violation of any mine safety law that [which] places a miner in imminent danger of serious physical injury or death, the commission shall revoke the mine's license for a period of not less than three (3) calendar years, up to and including a permanent revocation without [within] possibility of reinstatement, pursuant to KRS 351.194(4) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the revocation is for a period of less than a permanent revocation without [within] possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with any orders of the Mine Safety Review Commission and KRS 351.175.

(d) If a third offense is committed by a licensed premises, the commission may also impose a civil monetary penalty against the licensed premises not to exceed the gross value of the production of the licensed premises for up to ten (10) working days, in accordance with the factors established in KRS 351.194(7).

(7)(a) If a licensed premises commits a violation of any mine safety law that [which] results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine's license, including permanent revocation of the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the commission suspends the mine's license, it shall be automatically reinstated at the end of the period of suspension.

(c) If the commission revokes the mine's license for a period of less than a permanent revocation without possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(d) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with any orders of the Mine Safety Review Commission and KRS 351.175.

(8) If a licensed premises that has committed one (1) or more violations pursuant to subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, any penalties imposed on that licensed premises for those violations shall be imposed upon any entity that is determined by the commission to be a related successor to the licensed premises in question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working Conditions, or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or the commissioner's designee shall assess monetary penalties to a licensed facility that [which] has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that [may] lead to imminent danger or serious physical injury, or have resulted in serious physical injury or death, as follows:

(a) If the licensed facility has not had any previous violations during the previous twenty-four (24) months relating to roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plans that may [could] lead to imminent danger or serious physical injury, the penalty shall not be more than $2,500.

(b) If the licensed facility has had one prior offense during the previous twenty-four (24) months relating to the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty for a violation that may [could] lead to imminent danger or serious physical injury shall be not more than $4,000.

(c) If the licensed facility has had two (2) or more offenses relating to a violation during the previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty for a violation that may [could] lead to imminent danger or serious physical injury shall be not more than $5,000.

(d) If the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be $5,000, notwithstanding whether the licensed facility has been previously cited for such violation or assessed a penalty pursuant to this section.

(2) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

1. The licensed premises' cooperation with investigators;
2. The severity of the harm done, such as whether the violation resulted in:
   a. Death;
   b. Serious physical injury; or
   c. The placement of an individual in imminent harm;
3. The licensed premises' acceptance of responsibility for its actions;
4. The licensed premises' history of violations;
5. The licensed premises' adjudicated violations in other states;
6. Any mitigating circumstances; and
7. Any aggravating circumstances.

(3) Service. The notice of proposed penalty shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed.

(c) Failure to serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice as a result of the delay.

Service shall be made by one (1) or more of the following methods:
1. [a] The commissioner or the commissioner's designee may place a copy of the notice of proposed assessment in an envelope and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application.
2. The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.
3. The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include therein the fact of mailing and the return receipt, if any, received.
4. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.
5. Service by certified mail shall be complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person at the licensee address, upon the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.
The receipt return shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment; or

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

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

(a) Waiver.

1. The licensed facility issued a notice of proposed assessment may choose not to contest the assessment.

2. Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a waiver.

3. A final order shall be entered by the Mine Safety Review Commission finding that:

a. The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment;

b. The fact of the violation cited in the noncompliance or closure order is deemed admitted;

c. The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

d. The violation is a first, second, third, or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

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

Section 4. Criteria for the imposition and enforcement of sanctions against licensed facilities for failure to comply with the requirements for reporting an accident.

(a) General.

If the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements established (set forth) in KRS 351.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission shall also assess a civil monetary penalty against the licensed premises of not less than ten thousand dollars nor more than $100,000 for the failure.

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

(a) Appropriateness of the penalty.

1. Up to fifteen (15) points shall be assigned for the size of the mine.

2. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar year, the tonnage prorated to an annual basis.

3. Points shall be assigned as follows:

a. 0-3,000,000 tons, zero (0) points;

b. 3,000,000-5,000,000 tons, five (5) points;

c. 5,000,001-1 million tons, ten (10) points;

d. Over 1 million tons, fifteen (15) points;

(b) History of previous violations.

1. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period.

2. Points shall be assigned as follows:

a. 1-5 previous violations, zero (0) points;

b. 6-10 previous violations, five (5) points;

c. 11-20 previous violations, ten (10) points;

d. 21-30 previous violations, fifteen (15) points;

e. Over 30 previous violations, twenty (20) points;

(c) Negligence.

1. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident.

2. Points shall be assigned as follows:

a. No negligence. There shall be no negligence on the part of the licensee if it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for negligence.

b. Negligence. There shall be negligence if the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence.

(c) Reckless disregard. There shall be reckless disregard if the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty-five (25) points shall be assigned for reckless disregard.

(d) Gravity. Gravity shall be the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements.

1. A total of thirty (30) points shall be assigned for gravity.

2. Points shall be assigned as follows:

a. Up to twenty (20) points shall be assigned as follows for the severity of [any] injuries:

i. No serious physical injury occurred, zero (0) points;

ii. A serious physical injury occurred, ten (10) points;

iii. A fatality occurred, twenty (20) points;

b. Persons at risk of serious physical injury or death. Up to ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements and nineteen (19) points shall be assigned as follows:

i. Personnel were not at risk, zero (0) points;

ii. A person was at risk. Ten (10) points.

3. Determination of amount of penalty. The Mine Safety Review Commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in the following table:

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[Appendix A of the administrative regulation]

(a) The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the pe-
nality is demonstrably unjust.

2. The basis for every waiver shall be fully explained and documented in the record of the case.

(b)(1) If the commission waives the use of the point system, it shall use the criteria established by KRS 351.194(7) to determine the appropriate penalty.

(b)(2) If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

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

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

[APPENDIX A]

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LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 7, 2008
FILED WITH LFC: November 12, 2008 at 2 p.m.
CONTACT PERSON. Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.
(b) The necessity of this administrative regulation: Imposition of civil monetary penalties against licensees for non-intentional violations of mine safety laws pertaining to mine seal construction plans and unsafe working conditions.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will add a definition specific to the amendment. The amendment also adds violations of a mine seal construction plan and unsafe working conditions as items that will trigger a monetary civil penalty. The amendment in response to comment alters the definition of "unsafe working conditions" in order to clear up any confusion posed by the original definition.
(b) The necessity of the amendment to this administrative regulation: The 2007 General Assembly amended 351.070(15) expanding the authority of the Commissioner to assess monetary civil penalties for violation of mine seal construction plans and unsafe working conditions. This administrative regulation includes those items into the violations that will trigger a monetary civil penalty. The amendment in response to comments was necessary to clear up confusion with the definition of "unsafe working conditions."
(c) How the amendment conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger of serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes. The amendment in response to comments will make the definition of "unsafe working conditions" easier to understand and clear up any confusion created by the original definition.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the mining of coal in the Commonwealth will be affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be subjected to the impo-
sition of sanctions, including civil penalties for violations of mine seal construction plans and unsafe working conditions that could lead to imminent danger or serious physical injury.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Entities that comply with mine safety laws will not be subject to any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Compliance with mine safety laws will reduce the number of incidents that could result in an imminent danger, serious physical injury, or death.

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

(i) Initial: The costs associated with introducing additions to the penalty assessment process will be minimal and will be absorbed by the agency.

(ii) On a continuing basis: The number of administrative hearings may increase, but can be incorporated into current operations without additional staff or resources at this time.

(e) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation Agency funds.

(f) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Yes. There is no need for an increase in funding or fees to implement this amendment.

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

(h) Tiering: Is tiering applied? Yes. Tiering was applied as to the size of the mine based on coal tonnage produced in determining the imposition and enforcement of sanctions for failure to comply with accident reporting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the implementation of this administrative regulation: As contained in the enacted House Bill 207 of the 2007 General Assembly, the amended statute, KRS 351.070, allows for the addition of mine seal construction plans and unsafe working conditions as violations that will trigger monetary civil penalties.

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 in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue generated from the penalty assessments for violations of mine safety laws is unpredictable.

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

(c) How much will it cost to administer this program for the first year? The costs associated with introducing additional violations to the penalty assessment process will be absorbed by the agency without additional funds.

(d) How much will it cost to administer this program for subsequent years? The costs associated with administering this program are minimal.

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

Revenues (+/-): The agency cannot determine how many penalties will be assessed in a given year. Therefore, revenues generated from penalty assessments will be unpredictable.

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing
(Amended After Comments)

806 KAR 9:340. Forms for application, appointment, prelicensing, and continuing education course completion; examination retake, provider, and course approval; filing fee submission, instructor approval, continuing education attendance roster, and certificate of completion; specialty credit insurance producer supplement to license application, rental vehicle license supplemental application, continuing education certificate of completion, rental vehicle managing employee, continuing education certificate of completion, unlicensed employees, and representatives of rental vehicle agent; record correction, and background check request.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1)(4), 304.9-230(2), 304.9-295(3), KRS 304.9-430(1), 304.9-485(2), 304.9-513, 304.15-700, 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the executive director to adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-100. KRS 304.9-180(4) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(3) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-320(2) authorizes the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to KRS 304.9-513. KRS 304.15-700(2) authorizes the executive director to prescribe forms for the licensing of life [delete] settlement providers and [insert] settlement brokers. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to KRS 304.15-720.

Section 1. (1) Form CRL-01, "Certificate of Prelicensing Course Completion," shall be filed with the Department [Office] of Insurance by a prelicensing provider for each applicant that has completed a prelicensing course of study.

(2) Form 8301, "NAIC Individual Insurance Producer License Application," shall be filed by an individual applicant with the Department [Office] of Insurance to initiate the licensing process for a resident and nonresident individual agent, surplus lines broker, consultant, temporary agent, rental vehicle managing employee, specialty credit managing employee, managing general agent, adjuster, appraisal adjuster, administrator, reinsurance intermediary manager, reinsurance intermediary broker, [insert] settlement broker and [insert] settlement provider.
(3) Form 8301-BE, "NAIC Business Entity License Application," shall be filed with the Department[Office] of Insurance by a business entity applicant to initiate the licensing process for the business entity's counterparts of the individual licenses.

(4) Form 8302-AP, "Producer Appointment [Form]," shall be filed by an insurer to notify the Department[Office] of Insurance that an individual or a business entity agent or agency has been appointed to represent the insurer.

(5) Form 8202-TE, "Termination of Producer Appointment[Form]," shall be filed by an insurer with the Department[Office] of Insurance to terminate an agent's appointment with an insurer.

(6) Form VS, "Voluntary Surrender of License," shall be filed by an agent with the Department[Office] of Insurance to surrender his or her license.

(7) Form 8305, "Business Entity Designation or Termination of Designation Form," shall be filed with the Department[Office] of Insurance by a business entity to designate individuals to be authorized to act under the business entity's license and appointments.

(8) Form 8307, "Request for Unlicensed Adjuster Representing an Insurer to Adjust Losses Resulting From a Catastrophe[Activity]," shall be filed with the Department[Office] of Insurance by an insurer to give an adjuster that is not licensed in Kentucky temporary authority to adjust catastrophic claims.

(9) Form 8304, "Examination Retake Form," shall be filed with the Department[Office] of Insurance by an applicant who fails an examination or fails to keep an appointment to take an examination to request the opportunity to retake the examination.

(10) Form KYP-01, "Provider Approval Application," shall be filed by an applicant with the Department[Office] of Insurance to request certification as a continuing education or prelicensing provider.

(11) Form CE/PL-100, "Course Approval Application," shall be filed by a provider with the Department[Office] of Insurance to request approval of continuing education and prelicensing courses.

(12) Form KYP-01, "Filing Fee Submission Form," shall be filed by a provider with the Department[Office] of Insurance along with Form CE/PL-100 and Form CE/PL-200. It identifies the title of the course, the identity of the instructor and specifies the applicable filing fee.

(13) Form CE/PL-200, "Instructor Approval Application," shall be filed with the Department[Office] of Insurance to request approval of continuing education and prelicensing instructors.

(14) Form CE-300, "Continuing Education Course Attendance Roster," shall be filed by a certified provider with the Department[Office] of Insurance to certify licensees' attendance at a continuing education course.

(15) Form CE-301, "Approved Continuing Education Certificate of Completion," may be filed with the Department[Office] of Insurance to certify licensees' completion of a continuing education course.

(16) Form CA AFF 304, "Affidavit for Exemption from Continuing Education," shall be filed with the Department[Office] of Insurance by an agent that does not intend to sell any new insurance business to maintain his or her license to collect renewal commissions only.

(17) Form 8301-SC, "Specialty Credit Insurance Producer Supplemental[Supplement to License] Application," shall be filed with the Department[Office] of Insurance by a specialty credit insurance producer to list the retail stores that are included under the license.

(18) Form 8301-RV, "Retail Vehicle License - Supplementation Application," shall be filed with the Department[Office] of Insurance by a retail vehicle insurance producer to list the retail stores that are included under the license.

(19) Form CE/RV-302, "Continuing Education Certificate of Completion, Retail Vehicle Managing Employee," shall be filed with the Department[Office] of Insurance to certify the completion of the managing employee's continuing education.

(20) Form CE/RV-303, "Continuing Education Certification of Completion, Unlicensed Employees and Representatives[Representative of Retail Vehicle Agent]," shall be filed with the Department[Office] of Insurance to certify the completion of continuing education by all unlicensed employees.

(21) Form 8303, "Record Correction Form," shall be filed with the Department[Office] of Insurance by a licensee to make a change to the licensee's name or address.

(22) Form 8301-BGC, "Licensing[Background Check] Request Form," shall be filed by an applicant with the Administrative Office of the Courts to request a criminal background check that is required prior to licensing.

(23) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," is the form that members of the Armed Forces who have been mobilized to render assistance to the United States Government or a waiver of continuing education requirements, an examination of continuing education requirements.

(24) "NAIC Uniform Continuing Education Reciprocity Course Filing Form" is the form that continuing education providers may elect to submit to request course approval if the course is being offered in multiple states.

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

(a) Form CPL-01, "Certificate of Prenlicensing Course Completion (9/2008/5/2006 edition);

(b) Form 8301, "NAIC Individual Producer License Application (9/2008/5/2006 edition);

(c) Form 8301-BE, "NAIC Business Entity License Application (9/2008/5/2006 edition);

(d) Form 8302-AP, "Producer Appointment [Form (9/2008/5/2006 edition);

(e) Form 8302-TE, "Termination of Producer Appointment (9/2008/5/2006 edition);

(f) Form VS, "Application for Voluntary Surrender of License (9/2008/5/2006 edition);

(g) Form 8305, "Business Entity Designation or Termination of Designation Form (9/2008/5/2006 edition);

(h) Form 8307, "Request for Unlicensed Adjuster Representing an Insurer to Adjust Losses Resulting From a Catastrophe[Activity] (9/2008/5/2006 edition);

(i) Form KYP-01, "Provider Approval Application (9/2008/5/2006 edition);

(j) Form KYP-01, "Filing Fee Submission Form (9/2008/5/2006 edition);

(k) Form CE/PL-100, "Course Approval Application (9/2008/5/2006 edition);

(l) Form KYP-01, "Filing Fee Submission Form (9/2008/5/2006 edition);"

(m) Form CE/PL-200, "Instructor Approval Application (9/2008/5/2006 edition);"

(n) Form CE-300, "Continuing Education Course Attendance Roster (11/2008/9/2006/5/2006 edition);

(o) Form CE-301, "Approved Continuing Education Certificate of Completion (9/2008/5/2006 edition);"

(p) Form CE AFF 304, "Affidavit for Exemption from Continuing Education (9/2008/5/2006 edition);

(q) Form 8301-SC, "Specialty Credit Insurance Producer Supplement to License Application (9/2008/5/2006 edition);

(r) Form 8301-RV, "Retail Vehicle License - Supplemental Application (9/2008/5/2006 edition);

(s) Form CE/RV-302, "Continuing Education Certificate of Completion, Retail Vehicle Managing Employee (9/2008/5/2006 edition);"

(t) Form CE/RV-303, "Continuing Education Certificate of Completion, Unlicensed Employees and Representatives[Representative of Retail Vehicle Agent] (9/2008/5/2006 edition);

(u) Form 8303, "Record Correction Form (9/2008/5/2006 edition);" and

(v) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment (10/2007 edition); and

(x) NAIC Uniform Continuing Education Reciprocity Course
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

1. Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation prescribes the required forms for license application, appointment, pre-licensing and continuing education course completion, examination retake, provider and course approval, filing fee submission, instructor approval, continuing education attendance roster and certificate of completion, specialty credit insurance producer supplement to license application, rental vehicle license application, continuing education certificate of completion, unlicensed employees and representatives of rental vehicle agents, record correction, and background check request.

(b) The necessity of the administrative regulation: This regulation is necessary to implement the provisions of subtitles 9 and 15, which require the commissioner to prescribe forms for insurance licensing and education detailed above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(9) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms for confidentiality. KRS 304.9-485(2) directs the executive director to prescribe forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.9-570(2) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees.

2. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete information is filed for review with the Department of Insurance on initial licensing, and prescribes the required forms to ensure that the licensees continue to meet the statutory requirements for licensing.

3. If this is an amendment to an existing administrative regulation, provide a brief summary of:

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

- This amendment incorporates updates to the following forms: Kentucky Individual Application, Kentucky Business Entity Application, Application for Voluntary Surrender of License, and Record Correction Form. Additionally, the amendments incorporate the form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment and the NAIC Uniform Continuing Education Reciprocity Course Filing Form.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to incorporate changes to Kentucky's forms based on national changes and commonly asked questions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-255(9) authorizes the executive director to provide forms for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.9-570(2) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete information is filed for review with the Department of Insurance on initial licensing, and prescribes the required forms to ensure that the licensees continue to meet the statutory requirements for licensing.

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

- The amendment will change this existing administrative regulation:

- This amendment incorporates updates to the following forms: Kentucky Individual Application, Kentucky Business Entity Application, Application for Voluntary Surrender of License, and Record Correction Form. Additionally, the amendments incorporate the form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment and the NAIC Uniform Continuing Education Reciprocity Course Filing Form.

(f) The necessity of the amendment to this administrative regulation: These amendments are necessary to incorporate changes to Kentucky's forms based on national changes and commonly asked questions.

(g) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-255(9) authorizes the executive director to provide forms for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.9-570(2) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees.

(h) How the amendment will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete information is filed for review with the Department of Insurance on initial licensing, and prescribes the required forms to ensure that the licensees continue to meet the statutory requirements for licensing.

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

- The amendment will change this existing administrative regulation:

- This amendment incorporates updates to the following forms: Kentucky Individual Application, Kentucky Business Entity Application, Application for Voluntary Surrender of License, and Record Correction Form. Additionally, the amendments incorporate the form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment and the NAIC Uniform Continuing Education Reciprocity Course Filing Form.

(j) The necessity of the amendment to this administrative regulation: These amendments are necessary to incorporate changes to Kentucky's forms based on national changes and commonly asked questions.

(k) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-255(9) authorizes the executive director to provide forms for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.9-570(2) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.9-235(5), KRS 304.9-430(1), 304.9-485(2), 304.9-613, 304.15-700, 304.15-720

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

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amended After Comments)


RELATES TO: KRS 304 9-350
STATUTORY AUTHORITY: KRS 304.2-110, 304.9-350(8)
NECESSITY, FUNCTION, AND CONFORMITY: EO 2003-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 authorizes the Executive Director of the Office of Insurance 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 304.9-350(8) authorizes the Office of Insurance to promulgate an administrative regulation to recognize a formal financial planning certification or designation for the purposes of receiving a fee for financial planning services and the sale, solicitation or negotiation of life insurance or annuities for the same insurance risk. This administrative regulation sets forth the listing of recognized financial planning certifications and designations.

Section 1. Recognition of Financial Planning Certification and Designation. For purposes of KRS 304.9-350(8), the Department of Insurance recognizes the following financial planning certifications and designations:

   (1) Accredited Asset Management Specialist (AAMS);
   (2) Accredited Estate Planner (AEP);
   (3) Associate Financial Advisor (AFA);
   (4) Accredited Financial Consultant (AFC);
   (5) Associate, Financial Services Institute (AFSI);

   (6) Accredited Wealth Manager Advisor (AWMA);
   (7) Board Certified in Estate Planning (BCE);
   (8) Chartered Asset Manager (CAM); 
   (9) Chartered Advisor for Senior Living (CASC);
   (10) Certificate in Investment Performance Measurement (CIPM)

   (11) Certified Estate Advisor (CEA);
   (12) Certified Estate Planner (CEP);
   (13) Certified Financial Planner (CFP);
   (14) Certified Fund Specialist (CFS);
   (15) Certified Investment Management Analyst (CIMA);
   (16) Certified Pension Consultant (CPC);
   (17) Certified Public Accountant (CPA);
   (18) Chartered Financial Analyst (CFA);
   (19) Chartered Financial Consultant (ChFC);
   (20) Chartered Life Underwriter (CLU);
   (21) Chartered Market Technician (CMT);
   (22) Chartered Mutual Fund Counselor (CMFC);
   (23) Chartered Portfolio Manager (CPM);
   (24) Chartered Senior Financial Planner (CSFP);
   (25) Chartered Trust and Estate Planner (CTEP);
   (26) Fellow, Financial Services Institute (FFSI);
   (27) Fellow of the Life Management Institute (FLMI);
   (28) Financial Services Specialist (FSS);
   (29) Master Financial Advisor (MFA);
   (30) Master Financial Manager (MFM);
   (31) Master Financial Professional (MFP);
   (32) Masters of Science in Financial Services (MSFS);
   (33) Personal Financial Specialist (PFS);
   (34) Professional Financial Advisor (PFA);
   (35) Qualified Plan Financial Consultant (QPCF);
   (36) Registered Financial Specialist (RFS);
   (37) Registered Financial Planner (RFP);
   (38) Senior Registered Financial Planner (SRFP);

Section 2. Nothing in this administrative regulation shall exempt an agent who holds a certification or designation recognized in Section 1 of this administrative regulation from the compliance with the registration requirements of KRS 302.332(1). If the agent transacts business in this state as a broker-dealer, investment adviser, agent, or investment adviser representative.

SHARON CLARK, Commissioner
ROBERT VANDE, Secretary
APPROVED BY AGENCY: November 14, 2008
FILED WITH LRC: November 14, 2008 at noon
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 sets forth the listing of recognized financial planning certifications and designations. Individuals holding one of the recognized certifications or designations can receive a fee for financial planning services and a commission for the sale, solicitation or negotiation of life insurance or annuities for the same insurance risk.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 334, Section 1(8), as enacted by the 2008 General Assembly.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance 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 304.9-350(8) authorizes the Office of Insurance to promulgate an administrative regulation to recognize a formal financial planning certification or designation for the purposes of receiving a fee for financial planning services and the sale, solicita-
tion or negotiation of life insurance or annuities for the same insurance risk. This administrative regulation sets forth the listing of recognized financial planning certifications and designations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation provides the listing of recognized financial planning certifications and designations that would allow an individual to qualify for an exempt insurance to KRS 304.9-350 and, therefore, receive a fee for financial planning services and a commission for the sale, solicitation and negotiation of life insurance or annuities for the same insurance risk.

(2) If this is an amendment to an existing administrative regulation:

(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 authorizing statutes: This is a new administrative regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 47,000 insurance agents with a line of authority to sell life insurance or annuities in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals wanting to receive both a fee for financial planning services and a commission for the sale, solicitation and negotiation of life insurance or annuities for the same insurance risk will be required to hold one of the designations or certifications listed in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a specific cost to comply with this administrative regulation. However, there are costs to complete the required study and obtain specific financial planning designations. Those costs vary with the programs.

(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 be permitted to receive both a fee for financial planning services and a commission for the sale, solicitation and negotiation of life insurance or annuities for the same insurance risk.

(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.

(c) 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.

(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 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 licensed agents.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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 304.2-110, 304.9-350(8)

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

Amended After Comments

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A 050(1), 205.520(3), 205.5605, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.5203(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

7 Sect 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20 066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or
2. One (1) registered nurse and one (1) of the following:
   a. A social worker;
   b. A certified psychologist with autonomous functioning;
   c. A licensed psychological practitioner;
   d. A licensed marriage and family therapist; or
e. A licensed professional clinical counselor.

(6) "Behavioral support specialist" means an individual who has a master's degree from an accredited institution with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(7) "Domiciliary services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(10) "Communicable disease" means a disease that is transmitted:
(a) Through direct contact with an infected individual;
(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or
(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(11) "Consumer" is defined by KRS 205.5605(2).

(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:
(a) Select the design of their programs;
(b) Choose their providers of services, and
(c) Direct the delivery of services to meet their needs.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "DCBS" means the Department for Community Based Services.

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

(16) "Developmental disability" means a severe, chronic disability that:
(a) Is attributable to:
1. Cerebral palsy or epilepsy; or
2. Any other condition, excluding mental illness, closely related to mental retardation resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with mental retardation and which requires treatment or services similar to those required by persons with mental retardation;
(b) Is manifested prior to the individual's 22nd birthday;
(c) Is likely to continue indefinitely; and
(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:
1. Self-care;
2. Understanding and use of language;
3. Learning;
4. Mobility;
5. Self-direction; or
6. Capacity for independent living

(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:
(a) Is eighteen (18) years of age or older; and
2. Has a high school diploma or GED; or
(b) Is twenty-one (21) years of age or older; and
2. Is able to adequately communicate with recipients and staff,
(c) Has a valid Social Security number or valid work permit if not a U.S. citizen;
(d) Can understand and carry out simple instructions;
(e) Has the ability to keep simple records; and
(f) Is managed by the provider's supervisory staff.

(18) "Electronic signature" is defined by KRS 399.102(8).

(19) "ICF-MR-DD" means an Intermediate care facility for an individual with mental retardation or a developmental disability.

(20) "Home and community-based services" means nonresidential and nonmedical home and community-based services and supports that:
(a) Meet the consumer's needs; and
(b) Constitute a cost-effective use of funds.

(21) "Home health agency" means an agency that is:
(a) Licensed in accordance with 902 KAR 20.081, Operation and services; home health agencies; and
(b) Medicare and Medicaid certified.

(22) "Level of care determination" means a determination that an individual meets the Michelle P. waiver services(ICF-MR-DD) level of care criteria established in Section 5 of this administrative regulation.

(23) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335 300(2).

(24) "Licensed practical nurse" or "LPN" means a person who:
(a) Meets the definition of KRS 314.011(9); and
(b) Works under the supervision of a registered nurse.

(25) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(26) "Mental retardation" means an individual has:
(a) Significantly sub-average intellectual functioning;
(b) An intelligence quotient of seventy (70) or below; and
(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and
(b) Had an onset prior to eighteen (18) years of age.

(27) "Michelle P. recipient" means an individual who:
(a) Is a recipient as defined by KRS 205.845(9).
(b) Meets the Michelle P. waiver services(ICF-MR-DD) level of care criteria established in Section 5 of this administrative regulation; and
(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(28) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(29) "Occupational therapist" is defined by KRS 319A.C10(3).

(30) "Occupational therapist assistant" is defined by KRS 319A.C10(4).

(31) "Patent liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(32) "Physical therapist" is defined by KRS 327.010(2).

(33) "Physical therapist assistant" means a skilled health care worker who:
(a) Is certified by the Kentucky Board of Physical Therapy; and
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(34) "Physician assistant" or "PA" is defined by KRS 311.843(3).

(35) "Plan of care" or "POC" means a written individually planned developed by:
(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;
(b) The case manager or support broker; and
(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.

(36) "Plan of treatment" means a care plan used by an ADHC center.

(37) "Psychologist" is defined by KRS 319 010(8).

(38) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39) "Qualified Mental Retardation Professional" or "QMRP" is defined by KRS 2028 010(12).

(40) "Registered nurse" or "RN" means a person who:
(a) Meets the definition established in KRS 314.011(5); and
(b) Has one (1) year or more experience as a professional nurse.

(41) "Representative" is defined by KRS 205.5605(6).
(41)(42) "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.

(43)[(43) "Sex crime" is defined by KRS 17.165(1).
(44) [(44) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.
(45)(46) "Speech-language pathologist" is defined by KRS 334A.020(3).
(47) Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who
(a) Is eighteen (18) years of age or older; and
2. Has a high school diploma; or
(b) Is twenty-one (21) years of age or older; and
3. Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability.
(c) Is able to adequately communicate with the recipients, staff, and family members;
(d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and
(e) Has the ability to perform required record keeping.
(48)(49) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:
(a) Provide training, technical assistance, and support to a consumer; and
(b) Be a consumer in any other aspect of CDO.
(50)(51) "Support spending plan" means a plan for a consumer that identifies the:
(a) CDO services requested;
(b) Employee name;
(c) Hourly wage;
(d) Hours per month;
(e) Monthly pay;
(f) Taxes;
(g) Budget allowance; and
(h) Six (6)-month budget.
(52) "Violent crime" is defined by KRS 17.165(3)

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:
(a) Licensed in accordance with:
1. 902 KAR 20.066 if an adult day health care provider;
2. 902 KAR 20.076 if a group home,
3. 902 KAR 20.081 if a home health service provider;
4. 902 KAR 20.081 if a mental health care provider;
5. Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.
(2) A Michelle P. waiver service provider shall:
(a) Provide services to Michelle P. waiver recipients:
1. Directly; or
2. Indirectly through a subcontractor;
(b) Comply with the following administrative regulations and program requirements:
1. 907 KAR 1:671;
2. 907 KAR 1:672; and
3. 907 KAR 1:673,
(c) Not enroll a Michelle P. recipient unless the provider is able to
enroll a Michelle P. waiver recipient until the recipient's
enrollment is complete;
(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:
(a) A clinical record for each Michelle P. recipient that shall contain the following:
1. Pertinent medical, nursing, and social history;
2. A comprehensive assessment entered on form MAP-351 and signed by the:
   a. Assessment team; and
   b. Department;
3. A completed MAP 109;
4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;
5. The name of the case manager;
6. Documentation of all level of care determinations;
7. All documentation related to prior authorizations, including requests, approvals, and denials;
8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;
9. Documentation that the Michelle P. recipient receiving ADIC services or legal representative was provided a copy of the ADIC center's posted hours of operation;
10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints, and
11. Documentation of each service provided. The documentation shall include:
   a. The date the service was provided;
   b. The duration of the service;
   c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;
   d. Items of each service delivered;
   e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;
   f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. recipient's needs;
   g. The signature of the service provider; and
   h. Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained:
1. At least six (6) years from the date that a covered service is provided; or
2. For a minor, three (3) years after the recipient reaches the age of majority under state law, whichever is longer.
(2) Upon request, a Michelle P. waiver provider shall make information regarding service and financial records available to the:
(a) Department;
(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
(c) United States Department for Health and Human Services or its designee;
(d) United States Government Accountability Office or its designee;
(e) Kentucky Office of the Auditor of Public Accounts or its designee;
(f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:
(a) Is determined by the department to meet Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation, and
(b) Would, without waiver services, be admitted to an ICF-MR-DD or a nursing facility.
(2) The department shall perform a Michelle P. waiver service level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.
(3) A Michelle P. waiver service shall not be provided to an individual who:
(a) Does not require a service other than:
1. An environmental and minor home adaptation;
2. Case management;
3. An environmental and minor home adaptation and case management;
(b) Is an inpatient of:
1. A hospital;
2. A nursing facility; or
3. An ICF-MR-DD;
(c) Is a resident of a licensed personal care home, or
(d) Is receiving services from another Medicaid home and community based services waiver program.
(4) A Michelle P. waiver provider shall inform a Michelle P.
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recipient or his legal representative of the choice to receive:
(a) Michelle P. waiver services; or
(b) Institutional services
5. An eligible Michelle P. recipient or the recipient’s legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.
6. A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient’s:
(a) Termination from the Michelle P. waiver program; or
(b) 1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecutive days;
2. Return to the Michelle P. waiver program from an ICF-MR-DD or nursing facility within sixty (60) consecutive days;
(c) Admission to a hospital, or
(d) Transfer to another waiver program within the department.
7. Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:
(a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:
1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The recipient’s right to appeal the intended action through the provider’s appeal or grievance process;
(b) Submittal of a MAP-24 to the department at the time of the intended action; and
(c) The case manager or support broker in conjunction with the provider to:
1. Provide the recipient with the name, address, and telephone number of each current provider in the state;
2. Provide assistance to the recipient in making contact with another provider;
3. Arrange transportation for a requested visit to a provider site;
4. Provide a copy of pertinent information to the recipient or legal representative;
5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;
6. Continue to provide supports until alternative services are secured; and
7. Provide assistance to ensure a safe and effective service transition.

Section 5, Michelle P. Waiver Service[ICF-MR-DD] Level of Care Criteria. (1) An individual meets Michelle P. waiver service level of care criteria if the individual:
(a) Requires[To meet ICF-MR-DD level of care criteria—an individual shall require] physical or environmental management or rehabilitation and;
1. Has[a] a developmental disability or significantly sub-average intellectual functioning and requires[require] a planned program of active treatment to attain or maintain an optimal level of functioning;
2. Requires[require] a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:
   a.1. Learning fundamental living skills;
   b.2. Learning to live happily and safely within his or her limitations;
   c.3. Obtaining educational experiences which will be useful in self-supporting activities; or
   d.4. Increasing awareness of his or her environment; or
3. Has[a] a primary psychiatric diagnosis if:
   a.1. Possessing care needs listed in paragraph (a) or (b),
   b.2. The individual’s mental care needs are adequately handled in an ICF-MR-DD; and
   c.3. The individual does not require psychiatric inpatient treatment.
(b) Has a developmental disability and meets the:
1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).
(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet Michelle P. waiver service[ICF-MR-DD] level of care criteria.
(3) The department shall determine that an individual fails to meet Michelle P. waiver service[ICF-MR-DD] level of care criterion solely due to the individual’s age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Enrollment. (1) The department shall enroll an individual on a first priority basis if the individual:
(a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and
(b) Meets the eligibility criteria established in Section 4 of this administrative regulation.
(2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.
(3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.

Section 7. Covered Services. (1) A Michelle P. waiver service shall:
(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;
(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;
(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient’s family. A CDO service may be provided by a Michelle P. recipient’s family member and
(d) Shall be accessed within sixty (60) days of the date of prior authorization.
(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.
(3) Covered Michelle P. waiver services shall include:
(a) A comprehensive assessment which shall:
   1. Be completed by the department;
   2. Identify a Michelle P. waiver recipient’s needs and the services the Michelle P. waiver recipient or the recipient’s family cannot manage or arrange for on the recipient’s behalf;
   3. Evaluate a Michelle P. waiver recipient’s physical health, mental health, social supports, and environment;
   4. Be requested by an individual seeking Michelle P. waiver services or the individual’s family, legal representative, physician, physician assistant, QMFP, or ARNP;
   5. Be conducted by an assessment team; and
   6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient’s family;
(b) A reassessment service which shall:
   1. Be completed by the department;
   2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;
   3. Be performed at least every twelve (12) months;
   4. Be conducted using the same procedures used in an assessment service; and
   5. Not be retroactive;
(c) A case management service which shall:
   1. Consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;
   2. Be provided by a case manager who shall:
      a. Arrange for a service but not provide a service directly,
      b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient’s home, in the ADHC
center, or the adult day training provider's location.

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care;

d. Have a bachelor's degree from an accredited institution in a

human services field and be supervised by:

(i) A A QMRP;

(ii) A registered nurse who has at least two (2) years of experience working with individuals with mental retardation or a development disability;

(iii) An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iv) A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(v) A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vi) A certified psychologist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability; or

(vii) A licensed psychological practitioner at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

a. Be an RN;

b. Be an LPN;

c. Be a certified social worker;

d. Be an LMFT;

(e) Be an LPC;

f. Be a certified psychologist; or

g. Be a licensed psychological practitioner;

(h) Not include a group conference;

(i) Include development of a plan of care that shall:

a. Be completed on the MAP 109 using person-centered guiding principles;

b. Reflect the needs of the Michelle P. recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of ICF-MR/DB level of care;

5. Include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative; [and]

6. Include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or Institutional services; and

7. Not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient;

(c) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;

2. Be provided to a Michelle P. waiver recipient;

a. Who is functionally unable, but would normally perform age-appropriate homemaking tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

4. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

5. Be provided by direct-care staff;

6. Be provided to a Michelle P. recipient;

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living;

7. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

8. Not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient;

9. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

10. Not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient;

11. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

12. Not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient;

13. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;
identified in the plan of care;
c. The signature, date of signature, and title of the Individual preparing the note; and
d. The beginning and ending time of service;
(h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:
1. Meet all applicable safety and local building codes;
2. Relate strictly to the Michelle P. waiver recipient's disability and needs;
3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;
4. Be submitted on form MAP-95 for prior authorization; and
5. Include documentation with a detailed note which shall include:
   a. The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
c. The signature, date of signature, and title of the individual preparing the note;
(l) Occupational therapy which shall be:
1. A physician ordered evaluation of a Michelle P. recipient's level of functioning by applying diagnostic and prognostic tests;
2. Physician-ordered services in a specified amount and duration to assist a Michelle P. waiver member in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;
3. Training of other Michelle P. waiver providers on improving the level of functioning;
4. Exclusive of maintenance or the prevention of regression;
5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
6. Documented with a detailed staff note which shall include:
   a. The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
c. The signature, date of signature, and title of the individual preparing the note;
(m) Physical therapy which shall be:
1. A physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;
2. Physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;
3. Training of other Michelle P. waiver providers on improving the level of functioning;
4. Exclusive of maintenance or the prevention of regression;
5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
6. Documented with a detailed monthly summary note which shall include:
   a. The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
c. The signature, date of signature, and title of the individual preparing the note;
(k) Speech therapy which shall be:
1. A physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;
2. A physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;
3. Training of other Michelle P. waiver providers on improving the level of functioning;
4. Provided by a speech-language pathologist; and
5. Documented with a detailed monthly summary note which shall include:
   a. The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
c. The signature, date of signature, and title of the individual preparing the note;
(l) An adult day training service which shall:
1. Support the Michelle P. waiver recipient in daily, meaningful routines in the community;
2. Stress training in:
   a. The activities of daily living;
   b. Self-advocacy;
   c. Adaptive and social skills; and
   d. Vocational skills;
3. Be provided in a community setting which may:
   a. Be a fixed location; or
   b. Occur in public venues;
   c. Not be diversional in nature;
   d. Provided on site:
   a. Include facility-based services provided on a regularly-scheduled basis;
   b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or
   c. Prepare the recipient for transition from school to work or adult support services;
   d. Provided off site:
   a. Shall:
      (i) Include services provided in a variety of community settings;
      (ii) Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
   b. Be designed to result in increased ability to access community resources without paid supports; and
   c. Provide the opportunity for the recipient to be involved with other members of the general population; and
   d. May be provided as:
      (i) An enclave or group approach to training in which recipients work as a group or dispersed individually throughout an integrated work setting with people without disabilities;
      (ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or
      (iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;
7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;
8. Require that a Michelle P. waiver provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;
9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;
10.a. Be provided to recipients age twenty-two (22) or older; or
   b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;
11. Be documented with:
   a. A detailed monthly summary note which shall include:
      (i) The month, day, and year for the time period each note covers;
      (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
      (iii) The signature, date of signature, and title of the individual preparing the note; and
   b. A time and attendance record which shall include:
      (i) The date of service;
      (ii) The beginning and ending time of the service;
   c. The location of the service; and
   d. The signature, date of signature, and title of the individual providing the service;
(m) A supported employment service which shall:
1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an
individual without a disability is employed, 
2. Include attending to a recipient's personal care needs; 
3. Be provided in a variety of settings; 
4. Be provided on a one-to-one basis; 
5. Be provided under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III, proof of which shall be documented in the Michelle P. waiver recipient's file; 
6. Exclude work performed directly for the supported employment provider; 
7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee; 
8. Be documented by: 
   a. A detailed monthly summary note which shall include: 
      (i) The month, day, and year for the time period each note covers; 
      (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and 
      (iii) The signature, date of signature, and title of the individual preparing the note; and 
   b. A time and attendance record which shall include: 
      (i) The date of service; 
      (ii) The beginning and ending time of the service; 
      (iii) The location of the service; and 
      (iv) The signature, date of signature, and title of the individual providing the service; 
9. A behavioral support service which shall: 
   1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way; 
   2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors; 
3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include: 
   a. An analysis of the potential communicative intent of the behavior; 
   b. The history of reinforcement for the behavior; 
   c. Critical variables that preceded the behavior; 
   d. Effects of different situations on the behavior; and 
   e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior; 
4. Include the development of a behavioral support plan which shall: 
   a. Be developed by the behavioral specialist; 
   b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities; 
   c. Be revised as necessary; 
   d. Define the techniques and procedures used; 
   e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities; 
   f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive; 
   g. Reflect the use of positive approaches; and 
   h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; 
5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan; 
6. Include the monitoring of a Michelle P. recipient's progress which shall be accomplished by: 
   a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and 
   b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan; 
7. Provide for the design, implementation, and evaluation of systematic environmental modifications; 
8. Be provided by a behavior support specialist; 
9. Be documented by a detailed staff note which shall include: 
   a. The date of service; 
   b. The beginning and ending time; and 
   c. The signature, date of signature, and title of the behavioral specialist; 
(c) An ADHC service which shall: 
1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age; 
2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation: 
   a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring; 
   b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required; 
   c. Snacks; 
   d. Supervision by an RN; 
   e. Age and diagnosis appropriate daily activities; and 
   f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including: 
      (i) Monitoring of vital signs; 
      (ii) Assistance with activities of daily living; and 
      (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient; 
3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center; 
4. Include respite care services pursuant to paragraph (g) of this subsection; 
5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include: 
   a. A physician; 
   b. A physician assistant; 
   c. An ARNP; 
   d. An RN; 
   e. An LPN; 
   f. An activities director; 
   g. A physical therapist; 
   h. A physical therapist assistant; 
   i. An occupational therapist; 
   j. An occupational therapist assistant; 
   k. A speech pathologist; 
   l. A social worker; 
   m. A nutritionist; 
   n. A health aide; 
   o. An LPCC; 
   p. An LMFT; 
   q. A certified psychologist with autonomous functioning; or 
   r. A licensed psychological practitioner; and 
6. Be provided pursuant to a plan of treatment. The plan of treatment shall: 
   a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient; 
   b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and 
   c. Be developed annually from information on the MAP 351 and revised as needed; and 
(p) Community living supports which shall: 
1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home; 
2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include: 
   a. Routine household tasks and maintenance; 
   b. Activities of daily living; 
   c. Personal hygiene; 
   d. Shopping; 
   e. Money management; 
   f. Medication management;
g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

1. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-one basis;

5. Not be provided at an adult day-training or children’s day-
habitation site;

6. Be documented by:
   a. A time and attendance record which shall include:
      i. The date of the service;
      ii. The beginning and ending time of the service; and
      iii. The signature, date of signature and title of the individual
         providing the service; and

   b. A detailed monthly summary note which shall include:
      i. The month, day, and year for the time period each note
         covers;
      ii. Progression, regression, and maintenance toward outcome
         identified in the plan of care; and
      iii. The signature, date of signature, and title of the individual
         preparing the summary note;

7. Be limited to sixteen (16) hours per day alone or in combination
   with adult day training, [children’s day habilitation], and
   supported employment.

Section 8. Consumer-Directed Option. (1) Covered services and
supports provided to a Michelle P. waiver recipient participating
in CDO shall be nonmedical and include:

(a) A home and community support service which shall:
   1. Be available only under the consumer-directed option;
   2. Be provided in the consumer’s home or in the community;
   3. Be based upon therapeutic goals and not diversional in
      nature; and

   4. Not be provided to an individual if the same or similar
      service is being provided to the individual via non-CDO Michelle P.
      waiver services; and

(b) Include:

   a. Assistance, support or training in activities including
      meal preparation, laundry, or routine household care of mainten-
      ance;

   b. Activities of daily living including bathing, eating, dressing,
      personal hygiene, shopping, or the use of money;

   c. Reminding, observing, or monitoring of medications;

   d. Nonmedical care which does not require a nurse or
      physician intervention;

   e. Respite;

   f. Socialization, relationship building, leisure choice or
      participation in generic community activities.

(b) Goods and services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to en-
   hance independence within the home or community of the recip-
   ient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints;

(c) A community day support service which shall:

1. Be available only under the consumer-directed option;

2. Be provided in a community setting;

3. Tailored to the consumer’s specific personal outcomes related to
   the acquisition, improvement, and retention of skills and
   abilities to prepare and support the consumer for work or community
   activities, socialization, leisure, or respite activities;

4. Be based upon therapeutic goals and not be diversional in
   nature; and

5. Not be provided to an individual if the same or similar ser-
   vice is being provided to the individual via non-CDO Michelle P.
   waiver services; or

(d) Financial management which shall:

1. Include managing, directing, or dispersing a consumer’s
   funds identified in the consumer’s approved CDO budget;

2. Include payroll processing associated with the Individuals hired by a consumer or consumer’s representative;

3. Include withholding local, state, and federal taxes and mak-
   ing payments to appropriate tax authorities on behalf of a consumer;

4. Be performed by an entity:

   a. Enrolled as a Medicaid provider in accordance with 907 KAR
      1:672; and

   b. With at least two (2) years of experience working with the
      Michelle P. services target population;

5. Include preparing fiscal accounting and expenditure reports
   for:

   a. A consumer or consumer’s representative; and

   b. The department.

(2) To be covered, a CDO service shall be specified in a plan
of care.

(3) Reimbursement for a CDO service shall not exceed the
department’s allowed reimbursement for the same or similar ser-
vice provided in a non-CDO Michelle P. waiver setting.

(4) A consumer, including a married consumer, shall choose
providers and a consumer’s choice shall be reflected or docu-
menced in the plan of care.

(5) A consumer may designate a representative to act on the
consumer’s behalf. The CDO representative shall:

   a. Be twenty-one (21) years of age or older;

   b. Not be monetarily compensated for acting as the CDO
      representative or providing a CDO service; and

   c. Be appointed by the consumer on a MAP 2000 form.

(6) A consumer may voluntarily terminate CDO services by
completing a MAP 2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer
from CDO services if:

   a. Imminent danger to the consumer’s health, safety, or wel-
      fare exists;

   b. The consumer fails to pay patient liability;

   c. The recipient’s plan of care indicates he or she requires
      more hours of service than the program can provide; thus, jeop-
      arizing the recipient’s safety and welfare due to being left alone
      without a caregiver present;

   d. The recipient, caregiver, family, or guardian threatens or
      intimidates a support broker or other CDO staff;

   e. The department may terminate a consumer from CDO ser-
      vices if it determines that the consumer’s CDO provider has not
      adhered to the plan of care.

(8) Prior to a consumer’s termination from CDO services, the
support broker shall:

   a. Notify the assessment or reassessment service provider
      of potential termination;

   b. Assist the consumer in developing a resolution and preven-
      tion plan;

   c. Allow at least thirty (30) but no more than ninety (90) days
      for the consumer to resolve the issue, develop and implement a
      prevention plan, or designate a CDO representative;

   d. Complete, and submit to the department, a MAP 2000 ter-
      minating the consumer from CDO services if the consumer fails to
      meet the requirements in paragraph (c) of this subsection; and

   e. Assist the consumer in transitioning back to traditional Mi-
      chelle P. waiver services.

(10) Upon an involuntary termination of CDO services, the
department shall:

   a. Notify a consumer in writing of its decision to terminate the
      consumer’s CDO participation and

   b. Except in the case where a consumer failed to pay patient
      liability, inform the consumer of the right to appeal the depart-
      ment’s decision in accordance with Section 13 of this adminis-
      trative regulation.

(11) A CDO provider shall:

   a. Be selected by the consumer;

   b. Submit a completed Kentucky Consumer Directed Option
      Employee Provider Contract to the support broker;

   c. Be eighteen (18) years of age or older;

   d. Be a citizen of the United States with a valid Social Security
      number or possess a valid work permit if not a U.S. citizen;

   e. Be able to communicate effectively with the consumer,
      consumer representative, or family;
Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.  
(2) There shall be three (3) classes of incidents including:  
(a) A class I incident which shall:  
1. Be minor in nature and not create a serious consequence;  
2. Not require an investigation by the provider agency;  
3. Be reported to the case manager or support broker within twenty-four (24) hours;  
4. Be reported to the guardian as directed by the guardian; and  
5. Be retained on file at the provider and case management or support brokerage agency.  
(b) A class II incident which shall:  
1. Be serious in nature;  
2. Involve the use of physical or chemical restraints;  
3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;  
4. Be reported by the provider agency to:  
   a. The case manager or support broker within twenty-four (24) hours;  
   b. The guardian within twenty-four (24) hours;  
   c. The department within ten (10) calendar days of discovery; and  
   d. A class III incident which shall:  
   1. a. Be grave in nature;  
   b. Involve suspected abuse, neglect, or exploitation;  
   c. Involve a medication error which requires a medical intervention; or  
   d. Be a death.  
2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and  
3. Be reported by the provider agency to:  
   a. The case manager or support broker within eight (8) hours of discovery;  
   b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;  
   c. The guardian within eight (8) hours of discovery; and  
   d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.  
(3) Documentation with a complete written report for a death shall include:  
(a) The recipient's current plan of care;  
(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;  
(c) The recipient's current crisis plan;  
(d) Medication administration review forms for the current and previous month;  
(e) Staff notes from the current and previous month including details of physician and emergency room visits;  
(f) Any additional information requested by the department;  
(g) A coroner's report when received; and  
(h) If performed, an autopsy report when received.  
(4) All medication errors shall be reported to the department on a monthly medication error report form by the 15th of the following month.  

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.  
(2) A home health provider that chooses to use electronic signatures shall:  
(a) Develop and implement a written security policy that shall:  
   1. Be adhered to by each of the provider's employees, officers, agents, and contractors;  
   2. Identify each electronic signature for which an individual has access; and  
   3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form that shall:
1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
4. Provide the department with:
   1. A copy of the provider's electronic signature policy;
   2. The signed consent form; and
   3. The original signed signature immediately upon request.

Section 12. Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, are limited to forty (40) hours per calendar week:
(a) Homemaker;
(b) Personal care;
(c) Attendant care;
(d) Supported employment;
(e) Adult day health care;
(f) Adult day training;
(g) Community living supports;
(h) Physical therapy;
(i) Occupational therapy;
(j) Speech therapy; and
(k) Behavior supports.

(2) Respite services shall not exceed $4,000 per month, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed $500 per member, per calendar year.

(4) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The following rates shall be the fixed upper payment rate limits:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Upper Payment Rate Limit</th>
<th>Unit of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>$50.00 (fixed)</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Respite</td>
<td>$4,000 per calendar year</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Homemaker</td>
<td>$6.50</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Personal Care</td>
<td>$7.50</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Attendant Care</td>
<td>$2.90</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Supported Employment</td>
<td>$5.54</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>$2.75 (fixed)</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>$2.75</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>$5.54</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Behavior Supports</td>
<td>$33.25</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Environmental and Minor Home Adaptation</td>
<td>$500 per calendar year</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Financial Management</td>
<td>$12.50 (not to exceed eight (8) units or $100.00 per month)</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Support Broker</td>
<td>$265.00</td>
<td>One (1) month</td>
</tr>
</tbody>
</table>

Section 13. Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 097 KAR 1:563.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Person Centered Planning: Guiding Principles", March 2005 edition;
(b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;
(f) "MAP-95 Request for Equipment Form" June 2007 edition;
(g) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007 edition;
(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;
(i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;
(j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 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, Mon-day through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40601, phone (502) 564-7653.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions for Michelle P. waiver service coverage and reimbursement.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Delsenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Delsenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.
(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 statues by establishing the provisions for Michelle P. waiver service coverage and reimbursement in compliance with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Delsenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. The amendment after comments clarifies case management provisions and level of care criteria; inserts more detailed language regarding home and community supports and deletes the vague prior definition of home and community supports; corrects the consumer-directed option budget period; corrects a typographical error regarding adult day health care reimbursement, regarding case management reimbursement and children's day habilitation (which is not a Michelle
P. waiver service).

(b) The necessity of the amendment to this administrative regulation: The amendment after comments is necessary to clarify existing policy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of authorizing statutes by clarifying existing policy.

(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 statutes by clarifying existing policy.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation is expected to affect thousands of individuals diagnosed with mental retardation or a developmental disability by providing community-based services in lieu of institutional care. This administrative regulation will allow qualified, Medicaid enrolled providers throughout the Commonwealth of Kentucky to provide services and receive corresponding reimbursement for services provided to qualifying enrolled individuals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Those not enrolled as Medicaid providers who wish to provide Michelle P. services will have to enroll into the Medicaid program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The new administrative regulation will provide services to citizens of the Commonwealth diagnosed with mental retardation or a developmental disability.

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

(a) Initially: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs are contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver. DMS would provide service to the number of individuals presenting for services, or for the number of services or for the mix of services is predictable, the first fiscal year costs of the program is indeterminate. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately $66.5 million (state and federal funds combined). Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(b) On a continuing basis: Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs are contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver. DMS would provide service to the number of individuals presenting for services, or for the number of services or for the mix of services is predictable, the first fiscal year costs of the program is indeterminate. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately $66.5 million (state and federal funds combined). Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: $17.5 million has been allocated to the Department for Medicaid Services for the implementation of the Michelle P. waiver program. Of this $17.5 million, approximately $12 million will be from Title XIX federal funding and $5 million will be general fund dollars. Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as fees is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver. DMS would provide service to the number of individuals presenting for services, or for the number of services or for the mix of services is predictable, the first fiscal year costs of the program is indeterminate. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately $66.5 million (state and federal funds combined). Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid eligible individual diagnosed with mental retardation or developmental disability choosing to access services through the Michelle P. waiver program.

3. Identify each state or local government that requires or authorizes the action taken by the administrative regulation. This action is necessary to comply with an order issued by the Honorable Joseph M. Hood, United States District Court, Eastern District of Kentucky at Frankfort in response to the civil suit, Michelle P., by her next friend, Jim Deenroth, et. al. v. Janie Miller, Secretary, Kentucky Cabinet for Health and Family Services, in her official capacity, et. al., Civil Action No. 02-23-JMH.

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

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

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

(c) How much will it cost to administer this program for the first year? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately $66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

(d) How much will it cost to administer this program for subsequent years? Departmental cost associated with this administrative regulation is difficult to project for the first fiscal year as costs is contingent upon several factors. Key factors include the number of individuals who enroll as well as the type and amount of services individuals receive. Services are provided in accordance with individualized plans of care which may vary substantially. Pursuant to the "Michelle P." settlement agreement, the Department for Medicaid Services (DMS) is committed to serving up to 3,000 individuals in the first year of the waiver should 3,000 present for services. As neither the number of individuals presenting for services nor the mix of services is predictable, the first fiscal year costs of the program is indeterminable. However, DMS estimates costs for an entire year of the program if operating at the initial full capacity level (3,000 individuals enrolled and receiving services) to be approximately $66.5 million (state and federal funds combined.) Subsequent increases in capacity level, by fifty (50) percent in year two (2) followed by an additional fifty (50) percent increase in year three (3), would correspondingly increase the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.
GENERAL GOVERNMENT CABINET
Board Of Nursing
(Amendment)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 314.011(13), 314.031, 314.071(4), 314.091, 314.107, 314.470, 314.591(3)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.031(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against a licensee, holder of a certificate or license, or a person who, while on the job, is engaged in the business prohibited pursuant to KRS 314.4470, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are determined to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid complaint.

(4) A complaint shall be investigated. The staff may request an informal conference with the individual against whom the complaint has been made.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.470, the board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b) The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be determined that there is probable cause that a violation of KRS 314.091 has occurred.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.
on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

1. Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform.
2. Requiring the individual to have continuous, direct, on-site supervision by a registered nurse, physician, or dentist.
3. Specifying the individual’s practice setting.
4. Specifying the types of patients to whom the individual may give nursing care.
5. Requiring the individual to notify the board in writing of a change in name, address, or employment status.
6. Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements set by the board.
7. Requiring the individual to submit to the board evidence of physical or chemical dependency, mental health evaluations, counseling, therapy, or drug screens.
8. Meeting with representatives of the board.
9. Issuing the license or temporary work permit for a specified period of time.
10. Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions.
11. Requiring the individual to be employed as a nurse for a specified period of time.
12. Requiring the individual to complete a continuing education course in a specific subject.

JIMMY ISenberg, President
APPROVED BY AGENCY: October 23, 2008
FILED WITH LRC: October 30, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008, at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 time, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

1. Provide a brief summary of:

(a) What this administrative regulation does: It sets out how complaints against nurses are investigated and disposed of.

(b) The necessity of this administrative regulation: The Board is permitted by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out specific for investigation and disposition of complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out specific for investigation and disposition of complaints.

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

(a) How the amendment changes this existing administrative regulation: It adds a provision for when a consent decree can be issued and adds a term for disciplinary orders.

(b) The necessity of the amendment to this administrative regulation: The provision was added to the consent decree list because the Board has found that often older criminal convictions are forgotten and these cases should be handled in a less punitive manner. The new term "disciplinary orders" was added concerning requiring the nurse to earn additional continuing education. The Board feels this is an appropriate term for many orders.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is permitted to set these terms.

(d) How the amendment will assist in the effective administration of the statutes: By setting out these new terms.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those nurses with disciplinary orders, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to fulfill the terms in their orders.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There may be a cost associated with the continuing education course. The individual will have to pay a civil penalty for the consent decree.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with their orders.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

6. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or, by the change if it is an amendment: No increase will be necessary.

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

8. TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to adminis-
Section 1. Definitions. (1) "Board" is defined in KRS 314.011(1).
(2) "Client" means a patient, resident or consumer of nursing care.
(3) "Competence" means performing an act in a safe, effective manner.
(4) "Delegatee" means a person to whom a task is delegated.
(5) "Delegator" means the nurse delegating a task to another person.
(6) "Nurse" is defined in KRS 314.011(3).
(7) "Nursing task" means an act included in the definition of registered nursing practice, advanced registered nursing practice, or licensed practical nursing practice pursuant to KRS 314.011(8), (9), or (10).
(8) "Paramedic" is defined in KRS 311A.010.
(9) "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.
(10) "Unlicensed person" means an individual, other than a nurse, the client, or the client's family, legal guardian, or delegatee, who functions in an assistant or subordinate role to the nurse.

Section 2. Nurse's Responsibility in Delegation. (1)(a) A registered nurse or a licensed practical nurse may delegate a task to an unlicensed person in accordance with this section and Sections 3 and 4 of this administrative regulation.
(b) A licensed practical nurse is prohibited from delegating a task to an unlicensed person who is a school employee in a school setting pursuant to KRS 156.502(2)(c).
(2) A registered nurse may delegate a task to a paramedic employed in a hospital emergency department in accordance with KRS 311A.170 and Sections 3 and 4 of this administrative regulation.
(3) Prior to delegating a nursing task, the nurse shall determine the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation and assuring documentation.
(4) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated task or determined that the unlicensed person is competent to perform the nursing task.

Section 3. Criteria for Delegation. The delegation of a nursing task shall meet the following criteria:
(1) The delegated nursing task shall be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate.
(2) The delegated nursing task shall be a task that, in the opinion of the delegating nurse, can be competently and safely performed by the delegatee without compromising the client's welfare.
(3) The nursing task shall not require the delegatee to exercise independent nursing judgment or intervention.
(4) The delegator shall be responsible for ensuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of a delegated nursing task.
(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including the following:
(a) The stability and acuity of the client's condition;
(b) The training and competency of the delegatee;
(c) The complexity of the nursing task being delegated; and
(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

Section 5. Acts Which Shall Not Be Delegated. (1) The following acts shall not be delegated to an unlicensed person:
(a) The conversion or calculation of a drug dosage, including on an infusion pump;
(b) The administration of a medication via any injectable route, except for:
1. Enemas ("Enema") in an emergency;
2. As permitted by KRS 158.838;
(c) The administration of a medication via a tube inserted in any body cavity, except for:
1. The administration of a pheno-soda enema, such as "Fleet";
2. The administration of a medication via a gastrostomy or gastric tube for a student in a school setting;
(d) The administration of antineoplastic drugs;
(e) Sterile catheterization;
(f) The administration of rectal or vaginal medications, except as permitted by:
1. KRS 158.838; or
2. Administrative regulations promulgated in 002 KAR Chapter 20;
(g) The following tracheostomy care functions:
1. Changing the tracheostomy tube;
2. Realigning the outer cannula of the tracheostomy tube except in an emergency;
3. Deep suctioning beyond the length of the inner cannula;
(h) The insertion or replacement of a gastrostomy or gastric tube;
(i) Stopper procedures;
(j) Receipt of verbal orders from a licensed prescriber; and
(k) Calculation of carbohydrates for insulin administration.

JIMMY ISENBERG, President
APPROVED BY AGENCY: October 23, 2006
FILED WITH LRC: October 30, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008, at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by December 15, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets out criterion for nurses to follow to delegate nursing tasks to unlicensed person and paramedics.
(b) The necessity of this administrative regulation: KRS 314.131(6) and (10) allow RNs and LPNs to delegate nursing tasks to unlicensed personnel. This administrative regulation sets out the criterion that nurses are to use when delegating.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is authorized to regulate nursing practice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting criterion for delegation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It adds a list of those specific nursing tasks that cannot be delegated to an unlicensed person.
(b) The necessity of the amendment to this administrative regulation: The Board has determined that there are some nursing tasks that should not be delegated to an unlicensed person because of the complexity of the task or the potential of harm to the patient.
(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to regulate nursing practice, including the delegation of nursing tasks to unlicensed individuals.
(d) How the amendment will assist in the effective administration of the statutes: By specifying those nursing tasks that cannot be delegated, the amendment will assist the nurse in delegating and will protect the patients involved.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All RNs and LPNs, approximately 65,000.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to be aware of the nursing tasks that may not be delegated.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no cost to the nurse associated with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(f) TIERING: Is tiering applied? Tiering was not applied as the charges apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.
(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.
(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

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

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

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

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.243, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.633, 150.620, 150.650, 150.720, EO 2008-516

STATUTORY AUTHORITY: KRS 150.195(4) and (5), 150.225, 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.175 establishes the kinds of licenses and tags. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the
new Tourism, Arts and Heritage Cabinet.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:
   (a) Statewide annual fishing license (resident): twenty (20) dollars;
   (b) Statewide annual fishing license (nonresident): fifty (50) dollars;
   (c) Joint statewide fishing license (resident): thirty-six (36) dollars;
   (d) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:
   (a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $150; and
   (b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $500.

(3) Commercial fishing gear tags (not to be sold singly):
   (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and
   (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: $100.

(4) Hunting licenses:
   (a) Statewide hunting license (resident): twenty (20) dollars;
   (b) Statewide hunting license (nonresident): $150;
   (c) Statewide junior hunting license (resident or nonresident): five (5) dollars;
   (d) Shooting preserve hunting license (resident or nonresident): five (5) dollars;
   (e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and
   (f) Migratory game bird permit (resident or nonresident): ten (10) dollars.

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:
   (a) Trapping license (resident): twenty (20) dollars;
   (b) Trapping license (resident landowner/tenant): ten (10) dollars;
   (c) Trapping license (nonresident): $150, and
   (d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:
   (a) Game permit, resident bear: thirty (30) dollars;
   (b) Resident elk hunt permit: thirty (30) dollars;
   (c) Nonresident elk hunt permit: $305;
   (d) Resident out-of-zone elk hunt permit: thirty (30) dollars;
   (e) Nonresident out-of-zone elk hunt permit: $385;
   (f) Game permit, resident deer: thirty (30) dollars;
   (g) Game permit, nonresident deer: sixty (60) dollars;
   (h) Junior game permit, deer (resident or nonresident): ten (10) dollars;
   (i) Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;
   (j) Game permit, resident spring turkey: thirty (30) dollars;
   (k) Game permit, nonresident spring turkey sixty (60) dollars;
   (l) Game permit, resident fall turkey: thirty (30) dollars;
   (m) Game permit, nonresident fall turkey: sixty (60) dollars; and
   (n) Junior game permit, turkey (resident or nonresident): ten (10) dollars.

(9) Peabody individual permit: fifteen (15) dollars.

(10) Commercial mussel licenses:
   (a) Mussellic license (resident): $400;
   (b) Mussellic license (nonresident): $1,600;
   (c) Mussel buyer's license (resident): $600; and
   (d) Mussel buyer's license (nonresident): $1,600.

(11) Sportman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.

(12) Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.

(13) Land Between the Lakes hunting permit: twenty (20) dollars.

(14) Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:
   (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
   (b) Live fish and bait dealer's license (nonresident): $150.

(2) Commercial taxidermist license: $150.

(3) Commercial guide licenses:
   (a) Commercial guide license (resident): $150; and
   (b) Commercial guide license (nonresident): $400.

(4) Shooting preserve permit: $150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:
   (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
   (b) Scientific wildlife collecting permit: $250.

(7) nuisance wildlife control operators (NWCO) permit: $100;

(8) Faw license:
   (a) First two (2) acres or less: $150; and
   (b) For additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: $150.

(10) Commercial fish propagation permit: fifty (50) dollars.


(12) Annual wildlife transportation permit: $250; and

(13) Peabody Wildlife Management Area annual event permit: $250; and

(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

(1) Short-term licenses:
   (a) One (1) day resident fishing license: seven (7) dollars;
   (b) One (1) day nonresident fishing license: ten (10) dollars;
   (c) Seven (7) day nonresident fishing license: thirty (30) dollars;
   (d) Fifteen (15) day nonresident fishing license: forty (40) dollars;
   (e) One (1) day hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.

(2) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.

(3) Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;

(4) Three (3) day fur bearer's license: fifty (50) dollars; and


(6) Special resident commercial fishing permit: $300.

(7) Special non-resident commercial fishing permit: $300.

(8) Commercial waterfowl shooting area permit: $150.

(9) Shoot to retrieve field trial permits:
   (a) Fer trials (maximum four (4) days): seventy-five (75) dollars; and
   (b) Single day: twenty-five (25) dollars.

(10) Boat dock permits (per year):
   (a) Five (5) dollars through December 31, 2007; or
   (b) $100 per ten (10) year permit cycle beginning January 1, 2008.


(12) Commercial Roe-bearing Fish Buyer's permit;
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(a) Commercial Roe-bearing Fish Buyer's permit (resident): $500; and
(b) Commercial Roe-bearing Fish Buyer's permit (nonresident): $1,000.

(10) Commercial Roe-bearing Fish Harvester's permit:
(a) Commercial Roe-bearing Fish Harvester's permit (resident): $500; and
(b) Commercial Roe-bearing Fish Harvester's permit (nonresident): $1,500.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified.
(1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars and
(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
(3) Horse stall rental (per space, per day): two (2) dollars.
(4) Dog kennel rental (per dog, per day): fifty (50) cents.
(5) Pond stocking fee (per stocking):
(a) Ponds less than 1.5 surface acres: seventy-five (75) dollars.
(b) Ponds from 1.5 to 2.9 surface acres: $200; and
(c) Ponds equal to or greater than 3.0 surface acres: $200 plus $150 for each additional surface acre of water over 3.0 acres proportioned on a 0.25 acre basis.
(6) Commercial captive cervid permit (per facility, per year):
$150.
(7) Noncommercial captive cervid permit (per facility, per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:
(1) Fur processor's license (resident): $150.
(2) Fur buyer's license (resident): fifty (50) dollars.
(3) Fur buyer's license (nonresident): $300.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

MARCHETTA SPARROW, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by December 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the fees, terms, and expiration dates for licenses, tags, and permits sold by the Department of Fish and Wildlife Resources.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to authorize the Department of Fish and Wildlife Resources to promulgate administrative regulations establishing reasonable license fees and permit terms and the expiration dates of licenses and permits.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration dates of fish and wildlife permits. KRS 150.175 establishes the kinds of licenses and tags.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purpose of KRS 150.025, 150.175, 150.180(6) and 150.225 by establishing the type of permit needed and a reasonable fee for the fish transportation permit that is required to transport live fish into, within, or through Kentucky. This administrative regulation will also fulfill the purpose of 150.175 by establishing a permit and reasonable fee for a bear permit to be used in a bear season in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will establish a fish transportation permit and fee that is required by individuals, corporations, or businesses to transport live fish into, within, or through Kentucky. This amendment will also add the resident black bear permit and fee that is required by individuals legally hunting black bears in Kentucky.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to effectively manage the movement of fish into, within, or through Kentucky in order to prevent the spread of fish diseases (including the VHS fish disease) to fish populations in Kentucky. It is also needed to allow an unlicensed helper the ability to transport roe in the absence of the licensed commercial angler. This amendment also is necessary to monitor and evaluate hunter participation and hunter effort with regards to Kentucky's new black bear hunting season.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all individuals, businesses, or corporations that transport live fish into, within, or through Kentucky. Licensed fish propagators and Kentucky commercial anglers are exempt from this permit for their normal in-state movement of fish. The Fisheries Division currently issues 80-100 fish transportation permits per year. Previously this was a free permit established in 301 KAR 1:125 - Transportation of Fish. The number of permits issued per year is limited to the number of permits the commercial fishing industry requesting the ability for their helpers to legally transport roe in the absence of the commercial fisherman. The number of additional permits that will be issued to helpers of commercial fishermen is unknown at this time. The number of bear permits that will be sold to hunters is unknown at this time, since this is the first bear season in Kentucky's modern history.

(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 individuals, corporations, or businesses that transport fish into, within, or through Kentucky will need to purchase the fish transportation permit. In addition, all commercial fishermen who want their helpers to transport roe in their absence will need to purchase this permit. All individuals wishing to hunt black bears in Kentucky will need to purchase the bear permit.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost $25 for the fish transportation permit that will be valid for the calendar year. It will cost $30 for the bear permit that will be valid for one bear season.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will permit individuals, corporations, and businesses to transport and sell disease free fish in
Kentucky along with allowing an unlicensed helper to transport roe in the absence of the commercial fisherman. The bear permit will allow any resident to legally hunt black bears in Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially, there will only be a minimal set-up cost for the administrative body to implement this regulation using existing staff and resources.
(b) On a continuing basis: There will be no cost on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment. This amendment will establish two new permits. Fees charged for these permits will cover administrative cost to issue and track the fish transportation permits, and operate a check-in system for the bear season.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment established a fish transportation permit at a cost of $25 that is valid for the calendar year, and a bear permit at a cost of $30 that is valid for one black bear season.

(9) Is tiering applied? Tiering was not applied because it will individual, corporations, or businesses that transport fish into, within, or through Kentucky were treated equally. Similarly, all commercial fishermen who want their unlicensed helper the ability to transport roe in their absence were treated equally. Likewise, all persons who legally hunt black bears in Kentucky shall be required to purchase the same permit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175 establishes the kinds of licenses and tags. KRS 150.180(9) requires the department to issue transportation permits to transport fish into Kentucky. KRS 150.185(1)(V) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment creates the fish transportation permit is expected to generate approximately $3,000 the first year. The amount that will be generated by the bear permit is unknown since the first bear season in Kentucky will not occur until 2009.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Establishment of the fish transportation permit will generate about $3,000 per year for subsequent years. The amount that will be generated by the bear permit in subsequent years is unknown since the first bear season in Kentucky will not occur until 2009.

(c) How much will it cost to administer this program for the first year? Staff currently spends about 75 hours per year administering the program at a cost of about $2,500. Personnel will spend about 25 hours administering the 2-day bear hunt and initial expenditures to implement check stations will result in a cost of approximately $3,000.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the fish transportation program in subsequent years is $2,900. The cost to implement the bear hunt in subsequent years will be approximately $1,500.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

RELATES TO: KRS 223.160-223.220, 224.10-100, 224.10-110, 40 C F R 141.2, 141.43, 141.121, 141.419

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(29) and 224.10-110(2) authorizes the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, Effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the definitions of [re-necessary-to-define] terms used by the cabinet in 401 KAR Chapter 8.

Section 1. Definitions. (1) Action level means:
(a) The concentration of lead- or copper-in-water specified in 401 KAR 8:300, Section 2, which determines, in some cases, the treatment requirements contained in 401 KAR 8:300 that a water system shall follow;
(b) As used in 401 KAR 8:076, the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system shall follow.
(c) Approved source means the source of the water whether it be a spring, well, municipal water system, or other source that has been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR Chapter 8.
(d) Auxiliary intake means a piping connection or other device whereby raw water may be assured for treatment from a location or source other than the intake which is normally used.
(e) Best affordable technology or BAT means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system, taking cost into consideration. For purposes of setting maximum contaminant levels for synthetic organic chemicals, BAT shall be at least as effective as granular activated carbon.
(f) Blood lead level or BDL level means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood, or mg/dl.
(g) Board means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.
(h) Boil water advisory means a type of consumer advisory that provides notice to the consuming public through radio, television, newspaper, or other media and that conveys in the quickest and most effective manner possible:
(i) Information that water provided by a system may cause adverse human health effects due to possible biological contamination if consumed, unless it is first boiled for three (3) minutes at a
(a) Information that water provided by a system may cause adverse human health effects if consumed and what action the public is advised to take; or
(b) Other information that the public needs to know about its water.

(1)(2) "Consumer confidence report" means the annual report prepared by a community water system pursuant to 401 KAR 8:075 that informs consumers of the quality of the water distributed by the system and characterizes the risks of exposure to contaminants found in drinking water.

(26) "Contaminant" is defined by 40 C.F.R. 141.2, effective July 1, 2007.

(12) means a physical, chemical, biological, or radiological substance or other material found in water.

(27)(28) "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiochemical, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated by 401 KAR Chapter 8.

(19)(20) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(14)(15) "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(30) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal-plumbing materials, especially copper and brass, by forming a protective film on the interior surface of those materials.

(31) "Correctibility" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(32) "CPE" means a comprehensive-performance evaluation.

(33) "Cross connection" means a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas, or chemicals, whereby there may be flow from one (1) system to the other, the direction depending on the pressure differential between the two (2) systems.

(15)(16) "CT" or "CT-ele" means the product of "Residual disinfectant concentration" (C) in mg/L determined before or at the first customer and the corresponding "Disinfectant contact time" (T) in minutes, i.e., . CT = C x T. If a public water system applies disinfectants at more than one (1) point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation rate". In determining the total inactivation rate, the public water system shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time prior to subsequent disinfection application points. CT-ele means the CT value required for ninety-nine and nine tenths (99.9) percent (3-log) inactivation of Giardia lamblia cysts.

CT-ele

is the inactivation rate. The sum of the inactivation rates, total inactivation rate shown as

CT-ele

is-calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation rate equal to or greater than one (1) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(35) "Customer" means, as used in 401 KAR 8:075, a billing unit or service connection to which water is delivered by a community water system.

(36) "Department" means the Kentucky Department for Environmental Protection.

(37) "Detected" means, as used in 401 KAR 8:075, at or above the level prescribed by: (a) 401 KAR 8:250, Section 1(4), for an inorganic contaminant; (b) 401 KAR 8:400, Section 1(18) or 401 KAR 8:420, Section 1(7), for an organic contaminant.
(6) 40 C.F.R. 141.25(e), for a radioactive contaminant, as adopted without change in Section 2 of the administrative regulation.

(38): "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a process cake of diatomaceous earth is formed on a support matrix, such as a screen, mesh, or seepage, and while the water is filtered by passing through the cake on the seepage, additional filter media known as body feed is continuously added to the water to maintain the permeability of the filter cake.

(39): "Direct filtration" is defined by 40 C.F.R. 141.2, effective July 1, 2007.

(40): means a series of processes including coagulation and filtration, but excluding sedimentation resulting in substantial particulate removal.

(49): "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(71): "Disinfectant" is defined by 40 C.F.R. 141.2, effective July 1, 2007.

(81): means an oxidant added to water in a part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(42): "Disinfectant contact time" means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. It is equal to the "T" in a CT calculation. If only one (1) C is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at the point where residual disinfectant concentration (C) is measured. If more than one (1) C is measured, "T" means the first measurement of C, the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured and for subsequent measurements of C, the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated. Disinfectant contact time in pipelines shall be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs shall be determined by tracer studies or an equivalent demonstration.

(43): "Disinfection" is defined by 40 C.F.R. 141.2, effective July 1, 2007.

(49): means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(50): "Dosage" means the amount of a material by weight or volume applied to water that is related to the concentration of the material in the water.

"Domestic or other nondistribution system plumbing problem" means a total contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

"Dose equivalent" means the product of the absorbed dose from ionizing radiation and the factors that account for differences in biological effectiveness do to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements, or ICRU.

Effective corrosion inhibitor residual," as used in 401 KAR 8:300, means a concentration sufficient to form a passivating film on the interior walls of a pipe.


"Enhanced softening" means the improved removal of disinfection by-product precursors by pre-treatment softening.

(53): "Feed" means a monetary charge to be assessed by the cabinet.

(54): "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from the top to bottom. Inclucling an assessment of filter performance while another filter is being backwashed.

(56): "Filteration" is defined by 40 C.F.R. 141.2, effective July 1, 2007.

(60): means a process for removing particulate matter from water by passage through porous media.

(61): "First draw sample" means a one (1) liter sample of tap water collected in accordance with 401 KAR 8:300, Section 8(29), that has been standing in plumbing pipes at least six (6) hours and is collected without flushing the tap.

(67): "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Free-floating tap or outlet" means a tap or outlet that when turned on is flowing freely. It shall not mean a continuously operating tap.

(69): "GAC" means granular activated carbon filter beds with an empty bed contact time of ten (10) minutes based on average daily flow and a carbon backwash frequency of every 180 days.

(70): "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample calculation.

(71): "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(82): "Groundwater source" means a source of water for a public or semipublic water supply that does not have a free water exposure to the atmosphere or contain 10,000 mg/L or more total dissolved solids, and is not under the direct influence of surface water.

(83): "Groundwater under the direct influence of surface water" is defined by 40 C.F.R. 141.2, effective July 1, 2007.

"Gross water beneath the ground with significant occurrence of insects or other macroorganisms, algae, large-diameter pathogens such as Giardia lamblia, or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual source in accordance with the cabinet's "Guidance for Determination of Groundwater under the Direct Influence of Surface Water", September 1996, incorporated by reference in Section 4 of this administrative regulation.


(86): "LARGE" means the sum of the concentrations, in milligrams per liter, of the halocarbon acid compounds, rounded to two (2) significant digits after addition.

(87): "LARGE" means the sum of the halocarbon acid compounds, rounded to two (2) significant digits after addition.

(88): "LARGE" means the sum of the halocarbon acid compounds, rounded to two (2) significant digits after addition.

(89): "LARGE" means the sum of the halocarbon acid compounds, rounded to two (2) significant digits after addition.

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(93): "LARGE" means the sum of the halocarbon acid compounds, rounded to two (2) significant digits after addition.

(94): "LARGE" means the sum of the halocarbon acid compounds, rounded to two (2) significant digits after addition.
containing not more than two-tenths (0.2) percent lead;
(b) If used with respect to pipe-and-pipe fittings—pipe-and
pipe fittings—containing not more than eight and zero tenths (8.0)
percent lead; and
(c) If used with respect to plumbing fittings and fixtures-inten-
tended by the manufacturer to dispense water for human ingestion:
fitting and fixtures that are in compliance with standards estab-
lished in accordance with 42 U.S.C. Section 300g-6(c).
(70) "Load-service line" means a service line made of load
which connects the water main to the building inlet and any lead
pgtal, gooneck, or other fitting which is connected to the load
line.
(71) "Legionella" means a genus of bacteria, some species of
which have caused a type of pneumonia called Legionnaires Disease.
(72) "Manmade-beta-particle-and-photon-emitters" means all
radioisotopes emitting beta particles and photons listed in "Maxi-
imum Permissible Body Burden and Maximum Permissible Con-
centration of Radioisotopes in Air or Water for Occupational Ex-
posure," U.S. Department of Commerce, National Bureau of Stan-
dard, Handbook 69, except the daughter products of thorium-232,
uranium-235, and uranium-238. The document is incorporated by
reference in Section 3 of the administrative regulation.
(76) "Maximum contaminant level" or "MCL" is defined by 40
C.F.R. 141.2 effective July 1, 2007.
(a) The maximum-permissible level of a contaminant in water
which is delivered to a user of a public water system as measured
at points specified in 401 KAR Chapter 8; or
(b) As used in 401 KAR 8:076, the highest level of a contami-
ant that is allowed in drinking water. MCLs are set as close to the
MCLGs as feasible using the best available treatment technology.
(77) "Maximum contaminant level goal" or "MCLG" means the
level of a contaminant in drinking water below which there is no
known or expected risk to health. MCLGs allow for a margin of
safety.
(72) "Maximum residual disinfectant level" or "MRDL" means:
(a) A level of a disinfectant added for water treatment that shall
not be exceeded at the consumer's tap without an unacceptable
possibility of adverse health effects; or
(b) As used in 401 KAR 8:076, pursuant to 40 C.F.R.
141.162(q): The highest level of a disinfectant allowed in drinking
water. There is convincing evidence that addition of a disinfectant is
necessary for control of microbial contaminants.
(78) "Maximum residual disinfectant level goal" or "MRDLG" means:
(a) The maximum level of a disinfectant added for water treat-
ment which no known anticipated adverse effects on the health
of persons would occur, and which allows an adequate margin of
safety. MRDLGs are enforceable health goals and do not re-
fect the benefit of the addition of the chemical for control of water-
borne microbial contaminants; or
(b) As used in 401 KAR 8:076. The level of a drinking water
disinfectant below which there is no known or expected risk to
health. MRDLGs do not reflect the benefits of the use of disinfect-
ants to control microbial contaminants.
(79) "Maximum total-trihalomethane-potential" means the max-
imum-concentration of total-trihalomethanes, or THMs, produced
in a given water-containing excess free chlorine residue after
even (7) days retention at a temperature of twenty-five (25) de-
gress Celsius, or seventy-seven (77) degrees Fahrenheit, or above.
(80) "MCL" means maximum contaminant level.
(81) "MCLG" means maximum contaminant level goal.
(82) "Medium-size water system," as used in 401 KAR 8:300,
means a water system that serves greater than 3,300 and less than
or equal to 50,000 persons.
(83) "Mineral water" means bottled water that contains
not[82] less than 250 parts per million total dissolved solids.
(84) "MRDL" means maximum residual disinfectant level.
(85) "MRDLG" means maximum residual disinfectant level
goal.
(86) "Near the first service connection" means at one (1) of the
twenty (20) percent of service connections in the entire system that
are nearest the water supply treatment facility, as measured by
water transport time within the distribution system.
(87) "Noncommunity water system" is defined by 40 C.F.R.
141.2, effective July 1, 2007.
(88) "Non-potable water system" means a publicly-owned water
system that serves at least fifteen (15) service connections used by
persons for a period less than one year-round or that serves an average of at least twenty-five (25)
individuals daily at least sixty (60) days of the year but less than
year round. Noncommunity water systems are either transient or
nontransient.
(89) "NTU" means nonturbidity unit.
(90) "Operator" means a person who has on-site responsi-
bility and authority to conduct the procedures and practices nec-
cessary to ensure that the water supply system or a portion thereof
is operated in accordance with the laws and administrative regula-
tions of the commonwealth[1] or to supervise others in conducting
the procedures and practices. Maintenance personnel and others
who do not participate directly in the production or distribution of
potable water are not included in the term "operator."
(91) "Optimal corrosion control treatment", as used in 401
KAR 8:300, means the corrosion control treatment that mini-
mizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any
national primary drinking regulations.
(92) "Performance evaluation sample" is defined by 40 C.F.R.
141.2, effective July 1, 2007.
(93) means a reference sample provided to a laboratory for
the purpose of demonstrating that the laboratory is able to successu-
fully analyze the sample within limits of performance specified
by the cabinet. The true value of the concentration of the reference ma-
terial is unknown to the laboratory when the analysis is performed.
(94) "Person" means an individual, trust, firm, joint-stock com-
pany, corporation, including a government corporation, partnership,
association, federal agency, state agency, city, commission, politi-
cal subdivision of the commonwealth, or any inter-state body.
(95) "Picrowatt" or "pCi" means that quantity of radioactive
material producing 2.22 nuclear transformations per minute.
(96) "Point of disinfectant application" means the point where
the disinfectant is applied and water downstream of that point
is not subject to recontamination by surface water runoff.
(97) "Point of entry treatment device" means a treatment de-
vice applied to the drinking water entering a house or building
the purpose of reducing contaminants in the drinking water distri-
buted throughout the residence or building.
(98) "Point-of-use treatment device" means a treatment device
applied to a single tap used for the purpose of reducing contami-
ants in drinking water at that one (1) tap.
(99) "Potable water" means water that meets the provisions of
401 KAR Chapter 8, the quality of which is approved by the cabinet
for human consumption.
(100) "Private water supply" means a residual water supply
located on private property for the use of one (1) to three (3) resi-
dential households.
(101) "Product water" means the water processed by a
bottled water treatment plant that is used for bottled drinking water.
(102) "Professional engineer" means an engineer who is
licensed as a professional engineer in Kentucky, pursuant to KRS
Chapter 322.
(103) "Public water system" is defined by 40 C.F.R.
141.2, effective July 1, 2007.
(104) "Percentage of water system" means a water system for
the provision to the public of water for human consumption through a pipe or other-construction
conveyance, if the system has at least fifteen (15) service connec-
tions or regularly serves an average of at least twenty-five (25)
individuals daily at least sixty (60) days of the year. The term in-
cludes collection, treatment, storage, and distribution facilities un-
der control of the operator of the system and used primarily in con-
nection with the system, and collection and pretreatment storage
facilities not under control of the operator of the water system that
are used primarily in connection with the water system.
(105) "PWSID number" means the seven (7) digit identification

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number assigned to a public water system by the cabinet. The first
three (3) digits shall identify the county in which the public water
system is primarily located.
(104) "Rem" means the unit of dose-equivalent from ionizing
radiation to the total body or an internal organ or organ system.
(106) "Repeat compliance period" means any subsequent
compliance period after the initial compliance period.
(108) "Residual disinfectant concentration" means the con-
centration of disinfectant measured in mg/l in a representative sample
of water, it is the "C" in a CT calculation.
(107) "Sanitary survey" means an on-site review of the water
source, facilities, equipment, and operation and maintenance of-
(a public water system for the purpose of evaluating the adequacy of
source, facilities, equipment, and operation and maintenance for
producing and distributing safe drinking water.
(109) "Secondary contaminants" means contaminants
that do not, in general, have a direct impact on the health of
consumers but whose presence in excessive quantities may dis-
advantage the water system that serves the consumer and discredit
the supplier.
(23) [109] "Secondary standards" means the maximum con-
taminant levels for secondary contaminants.
(24) [110] "Secretary" means the secretary for the Environ-
mental and Public Protection Cabinet.
(111) "Sedimentation" means a process for removal of solids
before filtration by gravity or separation.
(112) "Semipublic water system" means a water system made
available for drinking domestic use that does not qualify as a
private or public water system.
(25) [112] "Service line sample" means a one (1) liter sample
of water, collected in accordance with 401-KAR 8:300, Section
8(2)(a), that has been standing for at least six (6) hours in a service
line.
(114) "Single-family structure", as used in 401-KAR 8:300,
means a building constructed as a single-family residence that is
currently used as either a residence or a place of business.
(115) "Slow sand filtration" means a process involving passage
of raw water through a bed of sand at low velocity, generally less
than four (4) m/hr, resulting in substantial particle removal
by physical and biological mechanisms.
(116) "Small water system", as used in 401-KAR 8:300,
means a water system serving 1,000 persons or fewer.
(117) "Specific analysis" means a laboratory analysis or pro-
dure acceptable to the cabinet for determining the amount of a
specific constituent of a type of contaminant regulated by 401-KAR
Chapter 8.
(118) "Standard sample" means the aliquot of finished drinking
water that is examined for the presence of coliform bacteria.
(119) "Standards" means a statute, rule, administrative minimum
TOC removal requirement pursuant to 401-KAR 8:110.
(120) "Supplier of water" means a person who owns or oper-
ates a public water system.
(36) [121] "Surface water" means water that is open to
the atmosphere and subject to surface runoff, or groundwater
under the direct influence of surface water.
(122) "Surface water source" means ponds, reservoirs,
streams of all sizes, free-flowing springs, or a source of water
supply for a public water system that has a free water surface
exposed to the atmosphere, or groundwater under the direct
influence of surface water.
(38) [123] "SUVA" means specific ultraviolet absorption at 254
nanometers, or nm. It is an index of the humic content of water,
calculated according to the procedures in 40 C.F.R. 141-142,
adoption without change in Section 2 of the administrative regula-
tion.
(124) "System" means a public water system.
(125) "System with a single service connection" means a
system that supplies drinking water to consumers via a single
service line.
(126) "THM" means trihalomethane.
(127) "TOC" means total organic carbon.
(128) "Too numerous to count" means the total number of
bacterial colonies exceeds 200 on a forty-milliliter (47-mm)
diameter membrane filter used for coliform detection.
(129) "Total organic carbon" or "TOC" means total organic
carbon in mg/l, measured using a humidifier, oxygen, ultraviolet irradiation,
chemical oxidants, or combinations of these oxidants, that convert
organic carbon to carbon dioxide, rounded to two (2) significant
figures.
(130) "Total trihalomethanes" or "THM" means the arithmet-
ical sum of the concentrations in micrograms per liter of the trihal-
ometanes, or THMs, compounds; trihalomethane; dibromomethane,
trihalomethanes, bromoform, and trihalomethanes, rounded to
two (2) significant figures.
(131) "Transient noncommunity water system" is defined by
(132) [130] "Treatment technique" means a required process inten-
tended to reduce the level of a contaminant in drinking water.
(133) "Trihalomethane" or "THM" means one (1) family of or-
geranic halogen compounds resulting from the displacement of three
(3) by the four (4) hydrogen atoms in methane with chlorine, bro-
mine, or iodine atoms in the molecular structure.
(134) "THM" means total trihalomethanes.
(135) "Turbidity" means the presence of suspended particu-
lates, including sand, silt, clay, finely divided organic or inorganic
matter, plankton or other microscopic organisms or elements
that may optically interfere with the clarity of liquids.
(136) [133] "Uncovered finished water storage facility" is de-
defined by 40 C.F.R. 141.1, effective July 1, 2007.
(137) [135] "Variances and exemptions" means, as used in 401-KAR
8:075, a permission issued by the cabinet pursuant to 401-KAR
8:060 to not meet an MCL or a treatment technique under-contain-
conditions described in 401-KAR 8:060.
(138) [137] "Virus" is defined by 40 C.F.R. 141.2, effective July 1,
2007.
(139) "Water distribution system" means the portion of the
water supply system in which water is conveyed from the water
treatment plant or other source used in the premises of a consum-
er, or a system of piping and ancillary equipment which is owned
and operated by an established water system independent of the
water supply system from that which potable water is purchased.
(140) [139] "Water supply reservoir" means, as used in 401-KAR
8:020, Section 2(18), a lake or reservoir as designated by its
developer, a public water system drawing raw water from the lake,
and not maintained as a water supply reservoir having an interest in
the lake and the watershed upstream of the dam or downstream outlet
of the lake.
(141) "Water supply system" means the source of supply and
all structures and appurtenances used for the collection, treatment,
storage, and distribution of water for a public or semipublic water
supply.
(142) [141] "Water treatment plant" or "purification plant"
means that portion of the water supply system that is
designated to either the physical, chemical, or bacteriological
classification of the water to be delivered to the water distribution
system.
(143) "Waterborne disease outbreak" means the significant
occurrence of acute infectious disease, epidemiologically associated
with the ingestion of water from a public water system that is def-
cient in treatment as determined by the cabinet.
Section 2. Federal Regulations Adopted Without Change. (1) 40
C.F.R. 141.25(c) and 141.131, July 30, 2007.
(2) The subject matter of this administrative regulation relating
to the definitions of "detected" and "SUVA" is governed by these
federal regulations.
Section 3. Incorporation By Reference. (1) The following ma-
terial is incorporated by reference.
(a) "Guidance for Determination of Groundwater Under the
Direct Influence of Surface Water, September 1993" and
(b) "Maximum Permissible Body Burden and Maximum Per-
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misible Concentration of Radionuclides in Air or Water for Occup-
elional Exposure, U.S. Department of Commerce, National Bu-
reau of Standards, Handbook 50, June 5, 1959, and Addendum 1,
August 1963.

(2) This material may be inspected, copied, or obtained, sub-
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ter Branch, 14 Reily Road, Frankfort, Kentucky 40601, Monday
through Friday, 8 a.m. to 4:30 p.m., or through
www.water.ky.gov/aww.

HENRY "HANK" LIST, Deputy Secretary,
For LEONARD K. PETERS, Secretary
APPROVED AGENCY November 13, 2008
FILED WITH LGC November 13, 2008

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
December 22, 2008 at 10:00 a.m. at the Capitol Annex, Room 149,
702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in
being heard at this hearing shall notify this agency in writing by
December 15, 2008, five (5) working days prior to the hearing, of
their Intent to attend. If no notification of intent to attend the hearing
is received by that date, the hearing may be canceled. This hearing
is open to the public. Any person who wishes to be heard will be
given an opportunity to comment on the proposed administrative
regulation. 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 either submit written comments
on the proposed administrative regulation. Written comments shall
be accepted until December 31, 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: Atigall Powell, Regulations Coordinator,
Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601,
phone (502) 564-3410, fax (502) 564-3111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-
tive regulation provides definitions for 401 KAR Chapter 8.

(b) The necessity of this administrative regulation: Definitions
clarify for the regulated community certain terminology that is not
defined in the dictionary.

(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 224.10-110 authorizes the cabinet
to regulate public and semipublic water systems.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administra-
tive regulation provides definitions for 401 KAR Chapter 8 to
clarify terms for the regulated community that are not defined in
the dictionary.

(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 administrative regulation is being amended to re-
move definitions that are no longer used and update some definitions
to cite the federal regulation rather than repeat the
federal language in the state regulation.

(b) The necessity of the amendment to this administrative regula-
tion: Many administrative regulations in chapter 8 are being
amended and this administrative regulation must conform to that
change.

(c) How the amendment conforms to the content of the autho-
rizing statutes: KRS 224.10-110 authorizes the cabinet to regulate
public and semipublic water systems. 401 KAR Chapter 8 are public
and semipublic water system regulations. This administrative
regulation provides definitions for 401 KAR Chapter 8.

(d) How the amendment will assist in the effective administra-
tion of the statutes: This administrative regulation contains defini-
tions for 401 KAR Chapter 8. It is being amended to reflect changes
in proposed amendments throughout the chapter.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: This administrative regulation affects 491 public, 50
semipublic, and 7 bottled water systems.

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

(a) List the actions that each of the regulated entities identified
in question (3) will have to take with comply with this administrative
regulation or amendment: This administrative regulation contains
definitions; there are no substantive requirements.

(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 will be no cost to regulated entities as results of
complying with this administrative regulation. This administrative
regulation contains definitions.

(c) As a result of compliance, what benefits will accrue to the en-
tities identified in question (3)? Affected entities will be able to
better understand the terms used throughout 401 KAR Chapter 8.

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

(a) Initially: There will be no additional cost to the administra-
tive body.

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

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation? The
Division of Water receives a combination of state general funds
and federal funds to administer the provisions of the federal Safe
Drinking Water Act.

(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
funding will be necessary as a result of this administrative regula-
tion.

(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees
This administrative regulation does not establish fees or directly or indi-
rectly increase fees.

(9) TIERING. Is tiering applied? No. This regulation contains
definitions that do not require 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? This administrative
regulation applies to public and semipublic water systems. Public
water systems are often owned by city governments or organized
under county governments. Other districts may, in some cases,
have a water system.

3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative
regulations. KRS 224.10-110 and 40 C.F.R. 141.2.

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

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

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

(c) How much will it cost to administer this program for the first
year? This administrative regulation will not generate any costs.

(d) How much will it cost to administer this program for subse-
quent years? This administrative regulation will not generate any
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 Expenditures: This administrative regulation provides definitions. It will have no fiscal impact.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
   40 C.F.R. 141.2
2. State compliance standards. KRS 223.160-223.220, 224.10-100(28), 224.10-110
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141.2 contains federal definitions for 40 C.F.R. 141.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Where terms in the federal definitions are used they are cited in this administrative regulation. There are additional definitions in this administrative regulation that are used in the state regulation that do not have federal counterparts. Although there are definitions in this administrative regulation that are based on state regulatory terms, the definitions do not, by themselves, impose stricter standards or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Although there are definitions in this administrative regulation that are based on state regulatory terms, the definitions do not, by themselves, impose stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:020. Public and semipublic water supplies; [-] general provisions.

RELATES TO: KRS 223.160-223.220, 224.10-100, 224.10-110, 40 C.F.R. 141.3, 141.31,[144.70,-144.72(6),-144.74]-141.75, 142.14, 142.15, 142.20, 142.21, 142.40-142.65, EO 2008-507, 2009-531.

STATUTORY AUTHORITY: KRS 223.200, 224.10-100(29)(30), 224.10-110(2), 40 C.F.R. 141.3, 141.31,[144.70,-144.72(6),-144.74]-141.75, 142.14, 142.15, 142.20, 142.21, 142.40-142.65, 42 U.S.C. 300 through 300d-300g-300h-300j.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(29)(30) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 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 establishes the general provisions for regulating public and semipublic water supplies.

Section 1. [Applicability:-(1) Inclusions: A public or semipublic water system shall be subject to the requirements of 401 KAR Chapter 8, except those exempted in [40 C.F.R. 141.3, effective July 1, 2007 (subcession (2) of this section).

(2) Exclusions: This chapter shall not apply to water systems in the following two (2) categories:

(a) Water systems that:
1. Consist of only distribution facilities and storage facilities;
2. Do not have collection or treatment facilities;
3. Are located outside of the city limits, and do not own or operate a public water system subject to 401 KAR Chapter 8, and
4. Do not sell water to any person, or
(b) Water systems which are not considered a convey-passenger

gate in interstate commerce.

Section 2. [Operation, Maintenance, and Safety Requirements:-(1) Public and semipublic water systems. A person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR Chapter 8 and 40 C.F.R. 141, effective July 1, 2007. A water supply system constructed prior to November 11, 1950 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR Chapter 8, or the system obtains a variance or exemption, as set forth in 401 KAR 8-000, from those standards in accordance with 40 C.F.R. 141, effective July 1, 2007 (with which they do not comply).

(2)(a) A cross-connection, crossing prohibited. All cross-connections shall be prohibited.

(b) The use of automatic devices, such as reduced pressure zone back flow preventer/valve, and a vacuum breaker (breakers), may be approved by the cabinet to promote public health, in lieu of [proper air gap separation].

(c) A combination of air gap separation and an automatic device (device) shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health.

(d) Every public water system shall determine if or where a cross-connection exists and shall immediately eliminate them.

(e) By-passers: A bypass shall not be created or maintained without the prior written approval of the cabinet stating that the approved circumstances for establishment of a bypass, its design, and the exact conditions (which exist) for its use.

(4) [Auxiliary intakes.] An auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency condition that necessitates [circumstances which necessitate] the intake.

(5) [Water- and sewer- connections.] The plumbing sewer system serving the purification plant and auxiliary facilities including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains shall discharge to [the sewer system] [where available]

(a) If a sewer is not in use, an auxiliary sewer shall be available, the connection shall be made to an approved sewage disposal facility approved pursuant to KRS Chapter 211.35 through 211.362 or 224.16-050.

(b) There shall be no connections between the sewer system and a filter backwash, filter to waste drain, drain, or well overflow line, unless an approved air gap is provided between the drain and overflow line [these drains and overflow lines] and the approved sanitary storm sewer or natural drainage system, so as to prevent the possibility of back-up of sewage or waste into the drain or overflow line.

(6) [Proper operation and maintenance.] The owner or operator of a public water system shall[satisfy] operate and maintain all facilities and systems of treatment, intake, and distribution to comply [with the requirements of] with the requirements of 401 KAR Chapter 8. Proper operation and maintenance includes effective performance, preventive maintenance, [adequate] operator staffing and training pursuant to 401 KAR 8-030, establishing [adequate] representative sample points that comply with the requirements of 401 KAR Chapter 8, and adequate process controls for testing, including [adequate] quality assurance procedures.

(7) [Reports to the cabinet.] (a) [Monthly operating reports.] The supplier of water shall provide a [file complete monthly operating report to the cabinet, which shall be received at the Division of Water, 200 Far Oaks Drive, Frankfort, Kentucky 40601 not later than ten (10) days after the end of the month of which the report is filed.

1. A completed report shall be signed by the cabinet. The reports shall be received at the cabinet and shall be received at the Division of Water, Drinking Water, 44 Main Street, Frankfort, Kentucky 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include:

a. Volume of water treated
b. Type and amount of chemicals added (and)
c. Test results appropriate to be reported by the plant, and...
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[Completed reports shall include] The dated original signature, or equivalent, pursuant to KRS Chapter 369, of the owner or authorized agent.

2. [The] supplier of water shall submit the reports required by 40 C.F.R. §141.75(b) [following reports] to the cabinet not later than ten (10) days after the end of each month the public water system serves water to the public.

3. Public water systems shall report to the cabinet in accordance with 40 C.F.R. §141.31, effective July 1, 2007:

(a) Turbidity measurements with maximum contaminant levels and monitoring in accordance with 401 KAR 8:150 or 401 KAR 8:160. The supplier of water shall include the following turbidity information in the monthly operating report:
   (i) The total number of filtered water turbidity measurements taken during the month;
   (ii) The number of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limit specified in 401 KAR 8:150, Section 2, or 401 KAR 8:160 for the filtration technology being used;
   (iii) The number and percentage of filtered water turbidity measurements taken during the month which exceed five (5) NTU or, for a system that serves a population greater than 10,000, one (1) NTU;
   (iv) The date and value of any turbidity measurements taken during the month which exceed five (5) NTU or, for a system which serves a population greater than 10,000, one (1) NTU.

(b) Disinfection information specified in 401 KAR 8:160, Section 3(2)(b). The supplier of water shall include the following disinfectant information in the monthly operating report:
   (a) For each day, the lowest measured residual disinfectant concentration in mg/L in water entering the distribution system;
   (b) The date and time of each violation when the residual disinfectant concentration in entering the distribution system fell below the residual requirements as specified in 401 KAR 8:160, Section 1(1), and when the cabinet was notified of the occurrence; and
   (c) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:160, Sections 1 and 3(2)(c):
      (i) The number of instances where the residual disinfectant concentration is measured;
      (ii) The number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or HPC, is measured;
      (iii) The number of instances where the residual disinfectant concentration is not measured and but heterotrophic bacteria plate count, or HPC, is not measured;
      (iv) The number of instances where the residual disinfectant concentration is measured but does not measure at least two tenths (0.2) milligrams per liter or ppm or the equivalent and no HPC is measured;
      (v) The number of instances where residual disinfectant concentration is less than two tenths (0.2) milligrams per liter and where HPC is greater than 600/ml;
      (vi) The number of instances where the residual disinfectant concentration is not measured and HPC is greater than 600/ml;
      (vii) For the current and previous month the system serves water to the public the value of $V$ in the following formula:

$$V = \frac{c + d + e - 100}{a + b}$$

where
   a = the value in subclause (i) of this clause
   b = the value in subclause (ii) of this clause
   c = the value in subclause (iii) of this clause
   d = the value in subclause (iv) of this clause
   e = the value in subclause (v) of this clause
   (vi) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory, then the system need not report the data specified in subclause (g) through (i) of this subsection shall not apply.

(b) Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the cabinet in accordance with paragraph (c) of this subsection. If the turbidity exceeds five (5) or one (1) NTU, as applicable to the system, the system shall inform the cabinet as soon as possible in accordance with paragraph (c) of this subsection. If the residual falls below the requirements specified in 401 KAR 8:150, Section 1(1), in the water entering the distribution system, the system shall notify the cabinet as soon as possible in accordance with paragraph (c) of this subsection. The system shall also notify the cabinet by the end of the next business day whether or not the residual was restored to the residual required by 401 KAR 8:160, Section 1(1), within four (4) hours.

(c) Reports of failure to comply. A public water system shall report to the cabinet within forty-eight (48) hours by phone or in writing the failure to comply with any provision of 401 KAR Chapter 8, including the failure to comply with monitoring requirements.

3. Emergency reports. If a public water system experiences a line break or loss of pressure as established (designated) in 401 KAR 8:150, Section 4(3), (4), (5), (6), or (7), or any other event that may result in contamination of the water, the public water system shall immediately report the cabinet by calling the Drinking Water Branch of the Division of Water in Frankfort at (502) 564-3310 or the appropriate regional field office of the Division of Water. If a report required by this paragraph is made during other than normal business hours, it shall be made through the twenty-four (24) hour emergency (24-hour emergency) telephone number, (502) 564-3310.

3(2) (c) Records to be maintained. Owners or operators of a public water system shall keep the records established in 40 C.F.R. §141.33, effective July 1, 2007 on or near the premises or readily accessible to cabinet staff inspecting the system (the records set forth in this subsection).

4. Data summaries. Each actual laboratory report shall be kept or data shall be transferred to tabular summaries. The following information shall be included:

1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample, or other special purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analyses;
5. The analytical technique or method used; and
6. The results of the analysis.

(b) Bacteriological analyses records shall be kept at least five (5) years.

(c) Chemical analyses records shall be kept at least ten (10) years.

(d) Turbidity samples analysis records shall be kept at least one (1) year and individual filter turbidity data shall be kept at least three (3) years, pursuant to 401 KAR 8:160.

(e) Records of violations and the actions taken by the system to correct violations of primary drinking water regulations shall be kept at least ten (10) years after the last action taken with respect to the particular violation involved.

(f) Records of sanitary surveys, copies of the written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system or any other public or federal agency, shall be kept at least ten (10) years after completion of the sanitary survey involved. They may be transferred to the cabinet.

(g) Records concerning the variance or exemption granted to the system shall be kept at least five (5) years following the expiration of the variance or exemption.

3. Water samples.

(a) Water samples:

1. A public water system or semisubmersible system may issue boil water advisories if the system believes an advisory is warranted.

2. The cabinet may direct that a boil water advisory be issued upon (when):
   (a) The reception of confirmed positive bacteriological results
[are-received] including E. coli or fecal coliform in at least one (1) sample; or
b. Other circumstances[exist] that warrant an advisory for the protection of public health;
3. The cabinet may, [if it determines] circumstances warrant for the protection of public health, issue a boil water advisory directly, rather than rely on a public or semipublic water system to issue the advisory.
4. Boil water advisories shall remain in effect until the cabinet approves the lifting of the advisory based on bacteriological results showing no coliform bacteria to be present in the water.
(b) Consumer advisory:
1. The cabinet may issue a consumer advisory if:
   a. Conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system; or
   b. Other information of interest to the consumer exists.
2. The advisory shall notify affected persons of a required or recommended action that should be taken.
   c. A public or semipublic water system shall:
      1. Immediately notify the local health department that serves the area affected [when] a boil water advisory or consumer advisory is issued. The notification may be made by telephone or fax machine for an occurrence during normal business hours. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department, or
      2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department [when] the system issues a boil water advisory or consumer advisory. The protocol shall address:
         a. For which types of advisories the system shall notify the affected health department;
         b. What procedures shall be used to notify[1] and under what circumstances[1]
         c. How soon after the occurrence the notification shall be made[1] and
         d. To whom the notification shall be made, during and after business hours [The public or semipublic water system shall comply with the agreed-upon protocol.]
(10) How to issue advisory.
(a) Boil water advisories and consumer advisories shall be issued through newspapers, radio, television, or other media having an immediate public impact.
(b) As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals that maintain public awareness.
(01) The advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem.
2. Boiling instructions shall caution to only boil[drinking] water to be used for consumption[for short-range use] by boiling the water for at least three (3) minutes at a rolling boil.
(11) Other notices. Other public notifications shall be issued by a public water system as required by 401 KAR Chapter 8.
(42) Maps.
(a) A public or semipublic water system shall have on the premises, or readily accessible to cabinet staff inspecting the system[conveniently located to the premises], an up-to-date map of the distribution system. The map shall, at a minimum, show:
1. Line size;
2. Cutoff valves;
3. Fire hydrants;
4. Flush hydrants;
5. Tanks;
6. Booster pumps;
7. Chlorination stations;
8. Connection to emergency or alternative sources;
9. Wholesale customer master meters; and
10. Type of piping material in the distribution system and its location.
(b) If a public water system[... due to age, improper documentation, lost documentation or other valid reason] is not able to comply with the requirements of paragraph(a) of this subsection[the requirement] the system may petition the cabinet to modify this requirement[the extent that compliance is not feasible].
(c) The petition for modification shall state specifically what portion of the requirements of paragraph (a) of this subsection[the requirement] is not practical and why.
(12) Operation and maintenance manual.
(a) Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes:
1. A detailed design of the plant;
2. Daily operating procedures;
3. A schedule of testing requirements designating who is responsible for the tests; and
4. Safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility.
(b) The operator and maintenance manual shall be updated as necessary, but not less than annually, and shall be available for inspection by the cabinet.
(c) Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive the requirements of paragraphs (a) and (b) of this subsection[the requirement]. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for execution by cabinet personnel.
(13) Flushing recommended.
(a) To protect public health, a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines.
1. Flushing shall start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main.
2. Flushing shall continue at each hydrant until all traces of turbidity and color are gone.
3. Hydrants shall be opened and shut slowly to prevent damage from water hammer.
(b) In addition to the regularly scheduled flushing, the following conditions shall indicate a need to flush the system:
1. Turbidity within the distribution system greater than five (5) or one (1) nephelometric turbidity units, or NTU, as applicable to the system;
2. An inability to maintain an adequate residual of a disinfection agent in any part of the system, or
3. A heterotrophic plate count, or HPC, in excess of 500
(01) Other indicators that flushing may be necessary shall be taste and odor complaints, color of water, contaminated water samples, or line repairs.
(14) A person shall not introduce into the water supply system a substance that may have a deleterious physiological effect, or for which physiological effects may not be known[... to the water supply system].
(15) [3A] Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity, disinfectant residuals, and other parameters specified by 40 CFR 141.131401 KAR 8:510, Section 8 may be performed by a certified operator[person approved by the cabinet].
(16) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations that the cabinet has the authority to enforce.
(a) Entry may include collection of water samples for laboratory analysis[.] and inspection of records, files, papers, processes, controls and facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8.
(b) The cabinet or its authorized agent may cause to be tested a sample from a public water system, including its raw water source, to determine compliance with applicable legal requirements.
(17) Recommended practices for water supply reservoirs
to be used for drinking water. The following practices may be employed by water systems that have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing, and other contact sports;
(b) Prohibition of large motor-driven craft or any craft with toilets;
(c) A requirement that an area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns;
(d) Prohibition of effluent from sewage treatment plants being discharged into the lake;
(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet; and
(f) Implementation of a nonpoint source pollution control plan shall be implemented.

(13)[16] Water treatment chemicals and system components. Chemical additives and protective materials, such as paints and linings, may be used by a water system if they meet the recommendations established in the Great Lakes-Upper Mississippi River Board of State Public Health & Environmental Managers' Recommended Standards for Water Works [shall be acceptable to the cabinet for use in contact with potable water.]

(20)[19] Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner that shall not violate 401 KAR 10:03.8(6.93).

(24)[20] Water loading stations. A public water system that provides water loading stations for the purpose of providing water to water hauling trailers or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes-Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works", "Regulatory Impact Analysis and Tiering Statement"

Section 3 [Records and Reports-Maintained by the Cabinet-]
The cabinet shall maintain and report records and reports as established in KRS 142.14 and 142.15, effective July 1, 2007 [adopted without change in Section 4 of this administrative regulation].

Section 4. A public water system may receive a variance or exemption from some provisions of 401 KAR Chapter 8 in accordance with 40 C.F.R. 141.4, 142.20, 142.21, 142.40-142.65, 142.301-142.313, effective July 1, 2007.


2. The subject matter of the administrative regulation relating to the records and reports required to be maintained by the cabinet shall be governed by those federal regulations.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 200 Fair Oaks Lane (Drinking Water Branch), 140 Merriweather Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained through the Division's Web site (http://www.wpr.state.ky.us) or by mail at kiermpy@kentucky.gov.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzesiak, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides general provisions for the regulation of public and semipublic water systems.
(b) The necessity of this administrative regulation: This administrative regulation provides general guidelines for public water systems to follow to protect public health, including reporting and recordkeeping requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 authorizes the cabinet to regulate public and semipublic water systems.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: General provisions provide public water systems with general guidelines for treating water to protect public health.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments will use federal citations rather than recreating federal language, clarifying that there are no differences between state and federal requirements in the parts of the administrative regulation promulgated to conform to the federal program.
(b) The necessity of the amendment to this administrative regulation: The cabinet believes that using federal citations instead of recreating federal language in state regulations will allow future changes in the federal program to be adopted more easily.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments will cite federal requirements rather than recreating federal language, clarifying that there are no differences between state and federal requirements in the parts of the administrative regulation promulgated to conform to the federal program.
(d) How the amendment will assist in the effective administration of the statutes: The cabinet believes this change will more efficiently allow the cabinet to keep up with future federal changes.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: This regulation applies to 491 public and 50 semipublic water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List 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 substantive requirements of the regulated entities are unchanged in this regulation. The amendments to this administrative regulation cite federal regulations instead of recreating federal language in the body of the state regu-
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... lation.
(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 does not change the cost of complying with the administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Public and semipublic water systems will benefit by clearly seeing the portions of this regulation that are federally required, and knowing that the state requirements are no more stringent than the federal requirements.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The requirements of this regulation remain unchanged from regulations currently in place.
(b) On a continuing basis: The requirements of this regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds to administer the requirements of the Safe Drinking Water Act.
(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 will not be necessary.
3. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish fees or directly or indirectly increase fees.
(9) TIERING: Is tiering applied? Yes. This regulation is tiered by distinguishing between public and semipublic water 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 administrative regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.
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(28), and 224.10-110, are state statutes under which portions of this regulation are promulgated. 40 C.F.R. 141 and 142 are promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act and portions of these regulations are cited where federal standards are to be maintained.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue for local governments for the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue for local governments in subsequent years.
(c) How much will it cost to administer this program for the first year? The amendments to this regulation are a change in format; they will not impose any additional cost for the first year.
(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation are a change in format; they will not impose 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: The amendments to this regulation are to cite federal regulations rather than recreate federal language in the body of state regulations. They will not impose additional cost or requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. Chapter 6A, Subchapter XII, the Safe Drinking Water Act, 40 C.F.R. 141 and 142
2. State compliance standards. KRS 223.220, 224.10-100(28), 224.10-110
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141 and 142 establish National Primary Drinking Water Regulations and implementation standards for those regulations. This regulation cites variance, exemption, conditions for use of noncentralized treatment devices and bottled water, and certain reporting and recordkeeping requirements pursuant to 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? Yes. Portions of this regulation are promulgated under KRS 224.10-110, 224.10-100, and 223.160. These requirements are for general operation and maintenance, boil water notices and advisories, procedures for repairing line breaks, and other general requirements for a public water system that have no federal counterpart. The portions of the regulation intended to cite federal requirements do not impose stricter requirements or different responsibilities or requirements than those imposed by the federal mandate. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements of this regulation that have been promulgated under state law have been in place for some time; most were in place prior to the passage of the Safe Drinking Water Act. Kentucky's heavy use of surface water sources and karstic groundwater geology have led to long standing practices and requirements designed to help protect public health.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water (Amendment)

401 KAR 8:070. Public notification.


STATUTORY AUTHORITY: KRS 224.10-100(28)(3), 224.10-110(2), 40 C.F.R. 141-40, Part 141-Subpart Q-Appendix A, 141.201-141.211, 141.340, 224.10-110(2) authorize the Secretary of the Environment and Public Protection Cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. ED 2008-507 and 2008-531; effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the requirements for notification of the public if a public water system violates a provision of 401 KAR Chapter 8. Some provisions relating to the certification of a public notification may be considered more stringent than federal requirements. These provisions relate to documenting how the public notification was performed and information to identify the water system and the violation for which
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Section 1. General Provisions. The owner or operator of a public water system in violation of a provision of 401 KAR Chapter 8 shall give public notice as established in 40 C.F.R. Subpart Q, 141.201 through 141.211, Appendix A, Appendix B, and Appendix C, effective July 1, 2007, according to the administrative regulation.

(a) The owner or operator of a public water system shall give public notice for a violation of the standards in 401 KAR Chapter 8, and for other situations, as listed in this subsection.

(b) Appendix A to 40 C.F.R. 141.211, Subpart Q, July 29, 2004 identifies the tier assignment for each specific violation or situation that requires a public notice.

1. Violations of 401 KAR Chapter 8 shall be:
   a. Failure to comply with an applicable maximum contaminant level or MCL, or maximum residual disinfectant level or MRDL, as required by 401 KAR Chapter 8;
   b. Failure to comply with a prescribed treatment technique, or TT, as required by 401 KAR Chapter 8;
   c. Failure to perform water quality monitoring, as required by 401 KAR Chapter 8;
   d. Failure to comply with testing procedures as required by 401 KAR Chapter 8;
   e. Variance, and exemptions, issued pursuant to 401 KAR 8.060 including:
      (i) Operation under a variance or an exemption issued pursuant to 401 KAR 8.060;
      (ii) Failure to comply with the requirements of a schedule that has been set under a variance or exemption issued pursuant to 401 KAR 8.060;
   f. Special public notices including:
      (i) Occurrence of a waterborne disease outbreak, as defined in 401 KAR 8.040, or other waterborne emergency identified in Section 2(1)(f) through 3 of this administrative regulation;
      (ii) Exceedance of the nitrate MCL by a noncommunity water system if granted permission by the cabinet under 401 KAR 8.250;
      (iii) Exceedance of the secondary maximum contaminant level or SMCCL for fluoride;
      (iv) Availability of unregulated contaminant monitoring data;
   g. Violation of other provisions of 401 KAR Chapter 8.

(2) Notice:
   (3) Tier Three (3) tiers of public notices shall be used to categorize the seriousness of the violation or situation and potential adverse effects that may be involved.

1. Tier 1 notice for violations of 401 KAR Chapter 8 and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure;
2. Tier 2 public notices for all other violations of 401 KAR Chapter 8 and situations with potential to have serious adverse effects on human health;
3. Tier 3 public notices for all other violations of 401 KAR Chapter 8 requiring public notification and situations not included in Tier 1 or Tier 2.

(3) Notification.
   (a) A public water system shall provide public notice to persons served by the water system in accordance with the administrative regulation.
   (b) A public water system that sells or otherwise provides drinking water to other public water systems, or a nonconsecutive water system, shall give public notice to the owner or operator of the other systems or the consecutive system.
   (c) The consecutive system shall provide public notice to the persons it serves.

1. If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the system may limit distribution of the public notice to only persons served by that portion of the system that is out of compliance.
2. The system shall obtain written permission from the cabinet for limiting distribution before distributing the notice.

(c) Certification. After a public notice has been made, the public water system shall send a copy of the public notice and a certification of its distribution to the cabinet in accordance with the following requirements:
1. Within ten (10) days of completing the public notification requirements of this administrative regulation, the public water system shall submit to the cabinet for the initial public notice and any repeat notices a copy of the certification that it has fully complied with the public notification requirements of the administrative regulation.
2. The certification shall include:
   a. The public water system’s name;
   b. PWSID number;
   c. The violation’s monitoring period covered by the notice;
   d. The violation number assigned by the cabinet and printed on the Notice of Violation, type of violation, and contaminants included in the violation;
   e. An explanation of how the system distributed the public notice to its customers;
   f. The name of the consecutive systems that were given public notice pursuant to paragraph (a) of this subsection and their PWSID numbers; and
   g. A certification that the public notice contains the ten (10) elements required in a public notice, as specified in Section 6(1) of the administrative regulation.
3. The public water system shall include with the certification a copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media. If printed in the newspaper, the page of the newspaper with the public notice shall be submitted showing the name of the newspaper and the date it was published.
4. The certification shall be signed and dated by the person responsible for preparing and distributing the public notice.
5. The system shall submit the certification and required documentation to the cabinet at the following address: Division of Water, ATTN: PN, 14 Foilly Road, Frankfort, Kentucky 40601.
6. Record maintenance—The public water system shall retain a copy of each public notice issued pursuant to this administrative regulation and its certification pursuant to paragraph (c) of this subsection for at least three (3) years after its issuance.

Section 2. Tier 1 Public Notice; Form, Manner, and Frequency:

(a) Tier 1 notices shall be given for the following violation categories and other situations, as specified in Appendix A to 40 C.F.R. 141.211, Subpart Q, July 29, 2004, identify the tier assignment for each specific violation or situation.
1. Violation of the MCL for total coliform if fecal coliform or E. coli are present in the water distribution system, as specified in 401 KAR 8.200;
2. If the water system fails to test for fecal coliforms or E. coli after a repeat sample tests positive for coliform, as specified in 401 KAR 8.200;
3. Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as specified in 401 KAR 8.250;
4. If the water system fails to take a confirmation sample within twenty-four (24) hours of the system’s receipt of the first sample result showing an exceedance of the nitrate or nitrite MCL, as specified in 401 KAR 8.260;
5. If the water system fails to test for total coliforms within twenty-four (24) hours of the system’s receipt of the first sample result showing an exceedance of the nitrate or nitrite MCL, as specified in 401 KAR 8.260;
6. Exceedance of the nitrate MCL by a noncommunity water system, if permitted to exceed the MCL by the cabinet under 401 KAR 8.250, as allowed under Section (d) of this administrative regulation.
7. Violation of the MRL for chloroform, as specified in 401 KAR 8.610, if one (1) or more samples taken in the distribution system the day following an exceedance of the MRL at the entrance of the distribution system exceeds the MRL;
8. If the water system does not submit the required results from samples collected in the distribution system, as specified in 401 KAR 8.610;
9. Violation of treatment techniques specified in 401 KAR 8.150, 401 KAR 8.160, and 401 KAR 8.162 resulting from a single exceedance of the maximum allowable turbidity limit, as identified in Appendix A to 40 C.F.R. Subpart Q, July 29, 2004, if the cabinet...
determines after consultation that a Tier 1 notice shall occur; or
2. If consultation with the cabinet does not occur within twenty-four (24) hours after the system learns of the violation.
3. Occurrence of a waterborne disease outbreak, as defined in 40 C.F.R. 510.1, or other waterborne emergency, such as a: 1. Failure or significant interruption in key water treatment processes; or
2. Natural disaster that disrupts the water supply or distribution system; or
3. Chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination; and
(2) When Tier 1 notice required: A public water system shall:
(a) Provide a public notice of a Tier 1 violation as soon as practical—but not later than twenty-four (24)—hours after the system learns of the violation;
(b) Initiate consultation with the cabinet as soon as practical; but not later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and
(c) Comply with additional public notification requirements, including repeat notice or direction on the duration of the posted notice, that are established as a result of consultation and agreement.
(3) Other violations of 40 C.F.R. Chapter 8—violations may include the timing, form, manner, frequency, and content of any repeat notices, and other actions designed to reach all persons served.
(3) Tier 1 notice, form, and manner:
(a) A public water system shall provide the Tier 1 public notice within twenty-four (24) hours in a form and manner reasonably calculated to reach all persons served.
(b) The form and manner of a Tier 1 public notice used by the public water system shall fit the specific situation, and shall be designed to reach residential, transient, and nontransient users of the water system.
(c) To reach all persons served, a water system shall use, at a minimum, one (1) or more of the following forms of delivery, as applicable to the system:
1. Broadcast media such as radio and television;
2. Posting of notice in conspicuous locations throughout the area served by the water system;
3. Hand-delivery of notice to persons served by the water system;
4. Another delivery method that has been proposed by the public water system and approved by the cabinet.
Section 3: Tier 2 Public Notice; Form, Manner, and Frequency of Notice. (1) Tier 2 public notices shall be given for the following violation categories and other situations:
(a) A violation of the MCL, MRDL, and treatment requirements, unless a Tier 1 notice is required under Section 2 of this administrative regulation, or a Tier 1 notice is required pursuant to 40 C.F.R. 141.203, November 8, 2006;
(b) A violation of the monitoring and testing procedure requirements, if a Tier 2 notice is required pursuant to 40 C.F.R. 141.203, November 8, 2006; and
(c) Failure to comply with the terms and conditions of a variance or exemption in place.
(2) When Tier 2 notice required:
(a) Initial notice:
1. A public water system shall provide public notice of a Tier 2 violation as soon as practical, but not later than thirty (30) days after the system learns of the violation.
2. If the public notice is posted, the notice shall remain in place while the violation or situation persists, but for not less than seven (7) days, even if the violation or situation is resolved.
(b) Except as provided in clause (b) of this subparagraph, additional time may be granted in accordance with 40 C.F.R. 141.023, November 8, 2006 for the initial notice of up-to three (3) months from the date the system learns of the violation.
(c) The cabinet shall not:
1. Grant an extension to the thirty (30) day deadline for an unresolved violation;
2. Allow comprehensive extensions for other violations or situations that require a Tier 2 public notice.
3. Extensions granted by the cabinet shall be in writing.
(3) Repeat notices:
1. The public water system shall repeat the notice every three (3) months while the violation or situation persists, unless the cabinet determines in writing that appropriate circumstances warrant a less frequent repeat notice.
2. The repeat notice shall not be given less frequently than once per year.
3. The system shall not give less frequent repeat notice for:
(a) An MCL violation under the total coliform rule;
(b) A treatment technique violation under the federal Surface Water Treatment Rule, 40 C.F.R. 141.70 to 141.75, June 29, 2004, or Interim Enhanced Surface Water Treatment Rule 40 C.F.R. 141.70 to 141.75, June 29, 2004, or Long-Term 1 Enhanced Surface Water Treatment Rule 40 C.F.R. 141.600 to 141.571, June 29, 2004.
4. The public water system shall not be comprehensive reductions in the repeat notice frequency for other ongoing violations that require a Tier 2 repeat notice.
5. Cabinet determinations allowing repeat notices to be given less frequently than once every three (3) months shall be in writing.
6. Turbidity violations.
(a) Criteria for a violation of the treatment technique requirement resulting from a single turbidity limit exceedance shall be as described in 40 C.F.R. 141 Subpart Q, Appendix A, May 4, 2006.
(b) The system shall consult with the cabinet for a violation of the treatment technique requirement from the surface water treatment rule or interim or long-term 1 enhanced surface water treatment rule, resulting from a single exceedance of the maximum allowable turbidity limit.
(4) For a turbidity violation specified in subparagraph 1 of this paragraph, a public water system shall consult with the cabinet as soon as practical, but not later than twenty-four (24) hours after the public water system learns of the violation, to determine if a Tier 1 public notice under Section 2 of this administrative regulation shall be required to protect public health. Conditions under which a Tier 1 public notice shall be required in conjunction with cabinet consultation shall be as established in 40 C.F.R. 141 Subpart Q, Appendix A, May 4, 2006.
(5) Consultation does not take place within the twenty-four (24) hour period, the water system shall distribute a Tier 1 notice of the violation within the next twenty-four (24) hours, which shall not be later than forty-eight (48) hours after the system learns of the violation, following the requirements under Section 2(2) and (3) of the administrative regulation.
(6) Tier 2 notices, form, and manner:
(a) A public water system shall provide public notice of the initial public notice and repeat Tier 2 notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notices may vary based on the specific situation and type of water system, but it shall meet at least the following requirements:
(b) Community water system: A community water system shall provide notice by:
1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which is delivered by the public water system; and
2. Other methods reasonably calculated to reach other persons regularly served by the system, if they may not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who do not pay water bills or do not have service connection addresses, for example, house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.
(b) Other methods may include:
(c) Publication in a local newspaper;
(d) Delivery of multiple copies for distribution by custome who provides their drinking water to others for instance apartment building owners or large private employers;
(e) Posting in public places served by the system or on the Internet;
(f) Delivery to community organizations.
(b) Noncommunity water system: A noncommunity water sys
Section 4—Tier 3 Public Notice: Form, Manner, and Frequency of Notice. (1) The following violations or situations shall require a Tier 3 public notice:

(a) A monitoring violation under 401 KAR Chapter 6, except that required to be a Tier 1 or Tier 2 violation under Section 2 or 3 of this administrative regulation;

(b) Failure to comply with a testing procedure established in 401 KAR Chapter 8, unless a Tier 1 notice is required by Section 2 of this administrative regulation;

(c) Operation under a variance or an exemption granted under 401 KAR 8.060;

(d) Availability of unregulated contaminant monitoring results, as required under Section 7 of this administrative regulation; and

(e) Exceedance of the fluoride secondary maximum contaminant level, as required under Section 8 of this administrative regulation.

(2) When Tier 3 notice provided:

(a) Initial notice. A public water system shall provide public notice of a Tier 3 violation not later than one (1) year after the public-water-system learns of the violation or situation or begins operating under a variance or exemption.

(b) Repeat notice. Following the initial notice, the public water system shall repeat the notice annually while the violation, variance, exemption, or other situation persists.

(b) If the public water system is closed, the notice shall remain in place until the violation, variance, exemption, or other situation persists, but for not less than seven (7) days, even if the violation or situation is resolved.

(3) Tier 3 notices, form, and manner. A public water system shall provide the initial notice and any repeat notices of a Tier 3 violation in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it shall meet at least the following requirements:

(a) Community water system. A community water system shall provide notice by:

1. Posting the notice in a conspicuous location throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known; and

2. Other methods reasonably calculated to reach other persons served by the system, if they may not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who may not see a posted notice because the posted notice is not in a location they routinely pass by.

(b) Other methods may include:

(i) Publication in a local newspaper or newsletter distributed to customers;

(ii) Use of a mail to notify employees or students, or

(iii) Delivery of multiple copies in central locations, for example, community centers.

(c) Upon written request from the water system, a different form and manner of public notice may be allowed pursuant to 40 C.F.R. 141.204, June 21, 2000.

Section 5—Public Notice Contents. (1) Each public notice required by Section 1 of this administrative regulation shall include the following elements:

(a) A description of the violation or situation, including the contaminants of concern, and, as applicable, the contaminant levels;

(b) When the violation or situation occurred;

(c) The potential adverse health effects from the violation or situation, including the standard language under subsection (4)(a) or (b) of this section, whichever is applicable;

(d) The population at-risk, including subpopulations particularly vulnerable if exposed to the contamination in their drinking water;

(e) If applicable, water supplies should be used; and

(f) What actions consumers should take, including if they should cook medical help, if known.

(2) What the water system is doing to correct the violation or situation;

(3) When the water system expects to return to compliance or resolve the situation;

(4) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice, and

(a) A public water system shall provide notice by:

1. Posting the notice in a conspicuous location throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known; and

2. Other methods reasonably calculated to reach other persons served by the system, if they may not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who do not pay water bills or do not have service connection addresses, for instance house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.

(b) Other methods may include:

1. Posting in public places or on the Internet; or

2. Delivery to community organizations.

(3) Noncommunity water system. A noncommunity water system shall provide notice by:

(a) Posting the notice in a conspicuous location throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known; and

(b) Other methods reasonably calculated to reach other persons served by the system, if they may not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include:

1. Publication in a local newspaper or newsletter distributed to customers;

2. Use of e-mail to notify employees or students; or

3. Delivery of multiple copies in central locations, for example, community centers.

(c) Upon written request from the water system, a different form and manner of public notice may be allowed pursuant to 40 C.F.R. 141.204, June 21, 2000.

(4) Alternative delivery method. For a community water system, the consumer confidence report required by 401 KAR 8.075 may be used as a vehicle for only the initial Tier 3 public notice and all required repeat notices if:

(a) The report is provided to persons served not later than twelve (12) months after the system learns of the violation or situation as required in subsection (2) of this section;

(b) The Tier 3 notice contained in the system's report meets the content requirements in Section 6 of this administrative regulation;

(c) The report is distributed following the delivery requirements in subsection (3) of this section; and

(d) The system submits a separate certification of the public notification as required by Section 1 of this administrative regulation and a certification of the report as required by 401 KAR 8.076, Section 6.
2. The date on which the variance or exemption was issued;
3. A brief status report on the steps the system is taking to install, treat any alternative sources of water, or otherwise comply with the terms and schedule of the variance or exemption; and
4. A notice of opportunity, including language described in 40 C.F.R. 206(p)(v), May 4, 2000, for public input in the review of the variance or exemption.

(a) Include the condition of a variance or exemption, the public notice shall contain the ten (10) elements listed in subsection (1) of this section.

(3) Presentation—A public notice required by Section 1 of this administrative regulation shall:

(a) Be displayed in a conspicuous place if printed or posted;
(b) Not contain overly technical language or very small print as described in 40 C.F.R. 141.206(c)(1)(i), May 4, 2000;
(c) Be formatted in a simple manner to provide clarity;
(d) Use common language understandable by the general public at least when the public notice is published.

(4) Compliance with the following multi-lingual requirements:

(a) The public notice shall contain information in an appropriate language to reach a large proportion of non-English speaking consumers regarding the importance of the notice or contain a telephone number or address so that persons served by the system may contact the water system to obtain a translated copy of the notice or to request an interpreter in the notice.

(b) If the cabinet has not determined what constitutes a large proportion of non-English speaking consumers pursuant to 40 C.F.R. 141.206(c)(2), May 4, 2000, the public water system shall include in the public notice the same information required in subparagraph (1) of this paragraph, to reach a large proportion of non-English speaking persons served by the water system.

(c) Standard language—A public water system shall include the following standard language in its public notice:

(a) Standard health effects language for an MCL or MRL violation, treatment technique violation, or violation of the condition of a variance or exemption. A public water system shall include in each public notice the health effects language specified in Section 14 of this administrative regulation corresponding to each MCL, MRL, and treatment technique violation listed in Appendix A to 40 C.F.R. Part 141, Subpart Q, July 29, 2006, and for each violation of a condition of a variance or exemption.

(b) Standard language for monitoring and testing procedure violations. A public water system shall include the following language in its notice, including the language necessary to complete the information in the notices, for all monitoring and testing procedure violations listed in Appendix A to 40 C.F.R. Part 141, Subpart Q, July 29, 2006.

(c) Standard language to encourage the distribution of the public notice to all persons served. A public water system shall include in its notice the following language, if applicable: "Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (except for people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail."

Section 7. Special Notices of Unregulated Contaminant Monitoring-Results Availability. (1) The owner or operator of a community or non-transient noncommunity water system required to monitor under 40 C.F.R. 141.40 (October 29, 2002) shall notify the persons served by the system of the availability of the results of the sampling not later than twelve (12) months after the monitoring results are known.

(2) The form and manner of the public notice required by subsection (1) of this section shall follow the requirements for a Tier 3 public notice prescribed in Section 4(3)(c), (4)(a), (c), and (d) of this administrative regulation. The notice shall also identify a contact person and provide the telephone number to call for information on the monitoring results.

Section 8. Special Notice for Fluoride-Exceedances. (1) A community water system that exceed the fluoride secondary maximum contaminant level of two (2) mg/L as specified in 401-KAR 8-600, as determined by the last single sample taken in accordance with 401-KAR 8-250, but does not exceed the maximum contaminant level of four (4) mg/L for fluoride, as specified in 401-KAR 8-250, shall provide the public notice in subsection (3) of this section to persons served by the system:

(a) Public notices shall be provided as soon as practical but not later than twenty-four (24) months from the date the water system learns of the exceedance.

(b) The public notice shall be provided to all new billing units and new customers when service begins and to the public health office of the Cabinet for Health and Family Services.

(c) The public water system shall repeat the notice at least annually while the secondary MCL is being exceeded.

(d) If the public notice is posted, the notice shall remain in place while the secondary MCL is being exceeded, but for not less than seven (7) days, even if the exceedance is eliminated from the system.

(1) Initial notices shall be issued pursuant to 40 C.F.R. 141.206, November 8, 2006, sooner than twenty-four (24) months and repeat notices more frequently than annually, if necessary to notify the customers of an exceedance.

(2) Form and manner. The form and manner of the special public notice required by this section, including repeat notices, shall follow the requirements for a Tier 3 public notice in Section 4(3)(c), (4)(a), (c), and (d) of this administrative regulation.

(3) The notice shall contain the following mandatory language, including the language necessary to complete the information in the notices: "This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children developing more than two (2) milligrams (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [name] has a fluoride concentration of [insert value] mg/L."

Dental fluorosis, in its moderate or severe form, may result in a brown-staining and/or pitting of the permanent teeth. The problem occurs only in developing teeth, before they erupt from the gums. Children under nine years of age should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also need to contact your dentist about proper use by young children of fluoride-containing products. Children and adults may safely drink the water.

Drinking water containing more than 4 mg/L of fluoride (The U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/L of fluoride, but we require you to notify us when we discover that the fluoride levels in your drinking water exceed 2 mg/L because of this cosmetic-dental problem.

For more information, please call [name of water system contact] at [phone number]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP."
Section 9. Special Notice for Specific Nitrato-Exceedances-(1) The owner or operator of a noncommunity water system that has permission to exceed the MCL for nitrate under 401-KAR 8.260 shall provide notice to persons served according to the requirements for a Tier-1 notice under Section 2(1) and (2) of this administrative regulation.

(2) A noncommunity water system granted permission by the cabinet to exceed the nitrate MCL under 401-KAR 8.260 shall provide continuous posting of the fact that nitrate levels exceed ten (10) mg/L and the potential health effects of exposure, according to the requirements for a Tier-1 notice delivery under Section 2(2) of this administrative regulation and the content requirements in Section 6 of this administrative regulation.

Section 10. Notice by Cabinet.—(1) The cabinet may give the notice required by this administrative regulation on behalf of the owner and operator of the public water system if the cabinet complies with the requirements of this administrative regulation.

(2) The owner or operator of the public water system shall comply with requirements of this administrative regulation, even if the cabinet provides the notice on behalf of the owner and operator.

Section 11. Standard Health Effects Language.—In its public notice of a violation required by Section 1 of this administrative regulation, a public water system shall provide the following health effects language for the indicated contaminant.

(1) Microbiological contaminants.

(a) Total coliforms. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(b) Fecal coliforms. E. coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(c) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(d) Giardia lamblia. Viruses, heterotrophic plate count bacteria, Legionella, and Cryptosporidium. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(2) Inorganic chemicals.

(a) Antimony. Some people who drink water containing antimony will in excess of the MCL over many years could experience increased risk of developing stomach and colorectal cancer.

(b) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(c) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(d) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increased risk in their blood pressure.

(e) Beryllium. Some people who drink water containing beryllium in excess of the MCL over many years could develop intestinal lesions.

(f) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(g) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergy dermatitis.

(h) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(i) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluorido-in drinking water at half the MCL or more may cause mottling of children’s teeth, usually in children less than nine (9) years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gum.

(j) Murcury. Inorganic. Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(k) Nitrate. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(l) Nitrates. Infants below the age of six (6) months who drink water containing nitrates in excess of the MCL could become seriously ill, and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(m) Total-nitrate and nitrites. Infants below the age of six (6) months who drink water containing nitrates and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(n) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail loss, numbness in fingers or toes, or problems with their circulation.

(o) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(p) Lead and copper.

(a) Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention, span and learning abilities. Adults who drink the water over many years could develop kidney problems or high blood pressure.

(b) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson’s Disease should consult their personal doctor.

(q) Synthetic organic chemicals.

(a) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(b) 2,4,5-TP, Silvex. Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(c) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(d) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(e) Benz(a)pyrene, PAEs. Some people who drink water containing benz(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(f) Carbofuran. Some people who drink water containing carbofuran well in excess of the MCL over many years could experience problems with their blood, or nervous system.

(g) Chlor dane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(h) Dieldrin. Some people who drink water containing dicofol in excess of the MCL over many years could experience problems with their blood, or nervous system.

(i) Dieldrin. Some people who drink water containing Dieldrin in excess of the MCL over many years could experience problems with their blood, or nervous system.

(j) Dieldrin. Some people who drink water containing Dieldrin in excess of the MCL over many years could experience problems with their blood, or nervous system.

(k) Dieldrin. Some people who drink water containing Dieldrin in excess of the MCL over many years could experience problems with their blood, or nervous system.

(l) Dieldrin. Some people who drink water containing Dieldrin in excess of the MCL over many years could experience problems with their blood, or nervous system.

(m) Dieldrin. Some people who drink water containing Dieldrin in excess of the MCL over many years could experience problems with their blood, or nervous system.
well in excess of the MCL over many years could experience minor kidney changes.

(i) Di-(2-ethylhexyl)-adipate. Some people who drink water containing di-(2-ethylhexyl)-adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.

(ii) Di-(2-ethylhexyl)-phthalate. Some people who drink water containing di-(2-ethylhexyl)-phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(iii) Dibromochloropropane or DBCP. Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(iv) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(m) Dioxin. 2,3,7,8-TCDD. Some people who drink water containing dioxin well in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(n) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(o) Endosulfan. Some people who drink water containing endosulfan well in excess of the MCL over many years could experience problems with their stomach or intestines.

(p) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(q) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(r) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience reproductive problems with their kidneys or reproductive difficulties.

(s) Hepatosil. Some people who drink water containing hepatosil in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(t) Hepatosil-epoxide. Some people who drink water containing hepatosil-epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

(u) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(v) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(x) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(y) Oxyphenanthroline. Some people who drink water containing oxyphenanthroline in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(z) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(aa) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(bb) Polychlorinated biphenyls, or PCBs. Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(cc) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(dd) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

(ee) Volatile organic chemicals.

(f) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(gg) Carbon tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(hh) Chlorobenzene, or monochlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(i) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(j) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(k) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years could have an increased risk of getting cancer.

(l) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(m) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(n) trans-1,2-Dichloroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(o) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(p) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(q) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(r) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(s) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver or kidneys.

(t) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their liver or kidneys.

(u) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(v) 1,1,1-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(w) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune system.

(x) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could...
experience problems with their liver and may have an increased risk of getting cancer.

(d) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(e) Xylenes. Total. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

(f) Radioactive contaminants.
   (1) Beta or photon emitters. Certain minerals are radioactive and may emit forms of radiation known as beta and gamma radiation. Some people who drink water containing beta or photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
   (2) Combined radium-226 and 228. Some people who drink water containing radium-226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
   (3) Uranium, for a community water system. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

(g) Disinfection by-products, by-product precursors, and disinfectant residuals.
   (a) Total trihalomethanes, or TTHMs. Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
   (b) Haloacetic acids, or HAA. Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
   (c) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
   (d) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
   (e) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritant effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort or anemia.
   (f) Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritant effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
   (g) Chlorine dioxide.

2. If any two (2) consecutive daily samples taken at the entrance to the distribution system are above the MRDL for chlorine dioxide
   a. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
   b. Add to public notification only. The chlorine dioxide violation reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposure. Certain groups, including infants, young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.

(h) Control of DBP precursors, or TOC. Total organic carbon, or TOC, has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(8) Other treatment techniques.
   (a) Acronym. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
   (b) Chlorophenia. Some people who drink water containing high levels of chlorophenol over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

HENRY "HANK" LIST, Deputy Secretary,
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 00 a.m. at the Capitol Annex, Room 149, 701 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulatory Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3200, fax (502) 564-3111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzeitky, Director
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation requires public water systems to provide notification to the public in accordance with 40 C.F.R. 141, subpart Q.
   (b) The necessity of this administrative regulation: Notification to the public when drinking water regulations are violated gives consumers information they need to protect their health.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: 424.10–100(28) and 224.10–110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This administrative regulation provides federal citations.

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instead of reproducing federal language in the body of a state administrative regulation. It does not change the requirements of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The cabinet believes that this amendment will allow future federal changes in regulatory requirements to be more easily adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. The citations will make the administrative regulation conform exactly to federal requirements for public notification.

(d) How the amendment will assist in the effective administration of the statutes: The cabinet believes that this amendment will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 431 public water systems.

(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 proposed amendments to this administrative regulation provide federal citations instead of federal language in the body of the state administrative regulation. The substantive requirements of the regulated entities are unchanged.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation remain unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit by clearly seeing the requirements of this administrative regulation are no more stringent than the federal requirements.

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

(a) Initially: The requirements of this administrative regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.

(b) On a continuing basis: The requirements of this administrative regulation remain unchanged from the currently effective administrative regulation. Costs of implementation will remain the same.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 is not necessary to comply with this proposed 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 directly or indirectly increase fees.

(b) TIERING: Is tiering applied? Yes. This administrative regulation differs in requirements for community water systems, non-community water systems, and transient non-community water 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 administrative regulation applies to public and semipublic water systems Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

3 Identify each state or federal statute or federal regulation that requires or authorizes the adoption of this administrative regulation. The Safe Drinking Water Act (42 U.S.C. 300f through 300j) and 40 C.F.R. 141 Subpart Q, require notification to the public in certain situations. KRS 224.10-100(29) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Chapter 6A, Subchapter XII, the Safe Drinking Water Act, and 40 C.F.R. 141 Subpart Q

2. State compliance standards. KRS 224.10-100(29), 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141, Subpart Q provides comprehensive requirements for public notification when violations to the national primary drinking water standards occur.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:075. Consumer confidence reports.

RELATES TO: KRS 224.10-100, 224.10-110(40—C.F.R. 144.25(5)—144.46(5)), 141.151-141.155, 42 U.S.C. 300j-300j-26, EQ 2008-507, 2008-531[Chapter 6A Subchapter XII]

STATUTORY AUTHORITY: KRS 224.10-100(29)(40), 224.10-110(2), 40 C.F.R. 144.25(5), 144.46(5), 141.151-141.155, 42 U.S.C. 300j through 300j-26 [Chapter 6A Subchapter XII]

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Section 1 (Applicability). (1)(a) In addition to the requirements in 401 KAR 8:020, Section 2, a community water system shall submit an annual consumer confidence report to its customers and to the cabinet in accordance with 40 C.F.R. 141 Subpart O, 141 O, 141 O, 141 O, and 141 O, including Appendix A, effective July 1, 2007, except as provided in subsection (2) of this section.

(b) A copy of the annual report and certification required by 40 C.F.R. 141 O, effective July 1, 2007, shall be delivered to the cabinet:

(a) Not later than fourteen (14) days after the date a community water system is required by 40 C.F.R. 141 O, effective July 1, 2007, to deliver the report to the system's customers; and

(b) Not later than fourteen (14) days after publication if a system serves fewer than 10,000 persons is publishing the report in a local newspaper in accordance with 40 C.F.R. 141 O, effective July 1, 2007, according to the requirements in this administrative regulation.

(b) The report shall contain information on the quality of the water delivered by the system and shall characterize the risk from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(2) An existing community water system shall deliver its report to its customers and to the cabinet by July 1 of each year.

(3) A new community water system shall deliver its first report to its customers and to the cabinet by July 1 of the year after its first full-calendar year in operation. Subsequent reports shall be delivered by July 1 of each year.

(4) A community water system that sells water wholesale to another community water system shall deliver the applicable information required in Section 2 of this administrative regulation to the buyer system.

(a) By April 1 of each year; or

(b) On a date mutually agreed upon by the seller and the purchaser. The date shall be specifically included in a contract between the parties.

Section 2. Report Contents. The report required by the administrative regulation shall contain the information specified in this section and Section 3 of this administrative regulation. The report shall include the name of the water system near the top of the report or on the front cover.

(a) Information on the source of the water delivered:

(1) The type of water, either water, ground water, or other specified water type; and

(2) The commonly used name and location of the body of water.

(b) If a source water assessment has been completed, the report shall contain information on the availability of the information and how to obtain it. A system may highlight in the report significant sources of contamination in the source water area.

If the cabinet has performed a source water assessment of the system, the report shall include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the cabinet or written by the operator.

(2) Definitions. The report shall contain the definitions found in 401 KAR 8:010 for the following terms:

(a) Maximum contaminant level goal, or MCLG;

(b) Maximum contaminant level, or MCL;

(c) Variance and exemption, if the system is operating under a variance or an exemption issued under 401 KAR 8:010;

(d) Treatment technique, action level, maximum residual disinfectant level goal, or MRDLG, or maximum residual disinfectant level, or MRDL, as applicable; if the report contains data on a contaminant for which the U.S. EPA has set a treatment technique, action level, MRDL, or MRDLG.

(e) Information on detected contaminants. The report shall contain information on the following contaminants detected in the water, subject to mandatory monitoring, except Cryptosporidium:

1. The regulated contaminants subject to an MCL, action level, maximum residual disinfectant level, or treatment technique, and

2. The unregulated contaminants for which monitoring is required by 40 C.F.R. 141 O, October 29, 2002.

(b) The data relating to the contaminants in paragraph (a), the data derived from data collected to comply with this administrative regulation and analytical requirements from the previous calendar year, except if a system is allowed to monitor for regulated contaminants less often than once a year then:

1. The table shall include the date and results of the most recent sampling.

2. The report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the administrative regulations in 401 KAR Chapter 8.

3. Data older than five (5) years may be reported.

(d) For detected regulated contaminants listed in Table A, the table in the report shall contain the information required in subparagraphs 1 to 10 of this paragraph.

Table A. Converting MCL Compliance Values for Consumer Confidence Reports

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Traditional MCL in mg/L</th>
<th>To convert for CCR multiply by</th>
<th>MCL in CCR Units</th>
<th>MCLG in CCR Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microbiological contaminants</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total coliform bacteria</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For a system that collects ≤ 40 samples per month: 5% of monthly samples are positive;</td>
<td>For a system that collects ≤ 40 samples per month: 6% of monthly samples are positive;</td>
<td>For a system that collects ≤ 40 samples per month: 5% of positive monthly sample</td>
<td>For a system that collects ≤ 40 samples per month: 6% of positive monthly sample</td>
<td>0</td>
</tr>
<tr>
<td>For a system that collects ≤ 40 samples per month: 1 positive monthly sample</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fecal coliform and E. coli</td>
<td>≤10 ppm</td>
<td></td>
<td>1 TTP, ppm</td>
<td>n/a</td>
</tr>
<tr>
<td>Total organic carbon</td>
<td>≤1 ppm</td>
<td></td>
<td>1 TTP, ppm</td>
<td>n/a</td>
</tr>
<tr>
<td>Chemical</td>
<td>Toxicity</td>
<td>FT-NTU</td>
<td>FT-NTU</td>
<td>n/a</td>
</tr>
<tr>
<td>------------------------------</td>
<td>----------</td>
<td>--------</td>
<td>--------</td>
<td>-----</td>
</tr>
<tr>
<td><strong>Tracer contaminants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Beta-or photon emitters</strong></td>
<td>4 pmc/MWh</td>
<td>4 pmc/MWh</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Alpha emitters</strong></td>
<td>15 pCi/L</td>
<td>15 pCi/L</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Combined radium</strong></td>
<td>6 pCi/L</td>
<td>6 pCi/L</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Uranium</strong></td>
<td>20 μg/L</td>
<td>20 μg/L</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Inorganic contaminants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Antimony</strong></td>
<td>0.006</td>
<td>1000</td>
<td>6 ppb</td>
<td>6</td>
</tr>
<tr>
<td><strong>Arsenic, until January 23, 2006; After January 23, 2006</strong></td>
<td>0.05</td>
<td>1000</td>
<td>60 ppb</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Asbestos</strong></td>
<td>0.010</td>
<td>1000</td>
<td>10 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Barium</strong></td>
<td>7 MFL</td>
<td>7 MFL</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td><strong>Beryllium</strong></td>
<td>2</td>
<td>2 ppm</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td><strong>Bromine</strong></td>
<td>0.004</td>
<td>1000</td>
<td>4 ppb</td>
<td>4</td>
</tr>
<tr>
<td><strong>Bromate</strong></td>
<td>0.010</td>
<td>1000</td>
<td>10 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Cadmium</strong></td>
<td>0.005</td>
<td>1000</td>
<td>6 ppb</td>
<td>5</td>
</tr>
<tr>
<td><strong>Chloramines</strong></td>
<td>MRDL = 4</td>
<td>MRDL = 4 ppm</td>
<td>MRDLG = 4</td>
<td></td>
</tr>
<tr>
<td><strong>Chlorone</strong></td>
<td>MRDL = 4</td>
<td>MRDL = 4 ppm</td>
<td>MRDLG = 4</td>
<td></td>
</tr>
<tr>
<td><strong>Chloro-dioxo</strong></td>
<td>MRDL = 8</td>
<td>1000</td>
<td>800 ppb</td>
<td>MRDLG = 800</td>
</tr>
<tr>
<td><strong>Chlorine</strong></td>
<td>1</td>
<td>1 ppm</td>
<td>0</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Chromium</strong></td>
<td>0.5</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td><strong>Copper</strong></td>
<td>AL = 1-3</td>
<td>AL = 1-3 ppm</td>
<td>AL = 1-3 ppm</td>
<td>1-3</td>
</tr>
<tr>
<td><strong>Cyano</strong></td>
<td>0.001</td>
<td>1000</td>
<td>4 ppb</td>
<td>4</td>
</tr>
<tr>
<td><strong>Furaneo</strong></td>
<td>0.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>2</td>
</tr>
<tr>
<td><strong>Lead</strong></td>
<td>0.002</td>
<td>1000</td>
<td>2 ppm</td>
<td>2</td>
</tr>
<tr>
<td><strong>Methane, inorganic</strong></td>
<td>0.002</td>
<td>1000</td>
<td>2 ppm</td>
<td>2</td>
</tr>
<tr>
<td><strong>Nitrogen</strong></td>
<td>0.002</td>
<td>1000</td>
<td>2 ppm</td>
<td>2</td>
</tr>
<tr>
<td><strong>Polychlorinated-PAH</strong></td>
<td>0.0002</td>
<td>1,000,000</td>
<td>200 ppb/L or ppt</td>
<td>0</td>
</tr>
<tr>
<td><strong>Carbofuran</strong></td>
<td>0.04</td>
<td>1000</td>
<td>40 ppb</td>
<td>40</td>
</tr>
<tr>
<td><strong>Chlordane</strong></td>
<td>0.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>2</td>
</tr>
<tr>
<td><strong>Dieldrin</strong></td>
<td>0.001</td>
<td>1000</td>
<td>200 ppb</td>
<td>200</td>
</tr>
<tr>
<td><strong>Di(2-ethylhexyl) adipate</strong></td>
<td>0.002</td>
<td>1000</td>
<td>200 ppb</td>
<td>200</td>
</tr>
<tr>
<td><strong>Dieldrin-phthalate</strong></td>
<td>0.006</td>
<td>1000</td>
<td>6 ppb</td>
<td>6</td>
</tr>
<tr>
<td><strong>Dibromochloropane</strong></td>
<td>0.0002</td>
<td>1,000,000</td>
<td>200 ppt</td>
<td>0</td>
</tr>
<tr>
<td><strong>Dinixine</strong></td>
<td>0.002</td>
<td>1000</td>
<td>7 ppb</td>
<td>7</td>
</tr>
<tr>
<td><strong>Diquat</strong></td>
<td>0.02</td>
<td>1000</td>
<td>20 ppb</td>
<td>20</td>
</tr>
<tr>
<td><strong>Dioxin, 2,3,7,8-TCDD</strong></td>
<td>0.00000003, or 3.0 x 10^-9</td>
<td>4,000,000,000, or 1 x 10^-6</td>
<td>30 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Endothal</strong></td>
<td>1</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td><strong>Endosulfan</strong></td>
<td>0.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>2</td>
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<tr>
<td><strong>Ethylene dibromide</strong></td>
<td>0.0005</td>
<td>1,000,000</td>
<td>60 ppt</td>
<td>0</td>
</tr>
<tr>
<td><strong>Ethylene dibromide</strong></td>
<td>0.004</td>
<td>1,000,000</td>
<td>400 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Hexachlorophene</strong></td>
<td>0.0002</td>
<td>1,000,000</td>
<td>200 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Hexachlorobenzene</strong></td>
<td>0.001</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Hexachloro-octane</strong></td>
<td>0.05</td>
<td>1000</td>
<td>50 ppb</td>
<td>50</td>
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<tr>
<td><strong>Lindane</strong></td>
<td>0.0002</td>
<td>1,000,000</td>
<td>200 ppt</td>
<td>0</td>
</tr>
<tr>
<td><strong>Methoxychlor</strong></td>
<td>0.04</td>
<td>1000</td>
<td>40 ppb</td>
<td>40</td>
</tr>
<tr>
<td><strong>Naphthalene, 1,2-dichloro</strong></td>
<td>0.002</td>
<td>1000</td>
<td>200 ppb</td>
<td>200</td>
</tr>
<tr>
<td><strong>PCB, or Poly(chlorinated biphenyls)</strong></td>
<td>0.0006</td>
<td>1,000,000</td>
<td>600 ppt</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.001</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0002</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Pentachlorophenol</strong></td>
<td>0.0006</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td>Compound</td>
<td>MCL</td>
<td>MCLG</td>
<td>AL</td>
<td>Range</td>
</tr>
<tr>
<td>-------------------------</td>
<td>------</td>
<td>------</td>
<td>-----</td>
<td>-----------</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>1000</td>
<td>6 ppb</td>
<td>0</td>
<td>6 ppb</td>
</tr>
<tr>
<td>Chlorobenzene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>o-Dichlorobenzene</td>
<td>0</td>
<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>p-Dichlorobenzene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>1,2-Dichloroethane</td>
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<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
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<tr>
<td>cis-1,2-Dichloroethylene</td>
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<td>0</td>
<td>1000</td>
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<tr>
<td>Dichloromethane</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
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<td>1,2-Dichloropropane</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>Ethylbenzene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
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<td>Halocarbons and HAA</td>
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<td>50</td>
<td>0</td>
<td>50</td>
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<td>Styrene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>Trichlorofluorocarbons</td>
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<td>1000</td>
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<tr>
<td>1,2,4-Trichlorobenzene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane</td>
<td>0</td>
<td>2000</td>
<td>0</td>
<td>2000</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane</td>
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<td>2000</td>
<td>0</td>
<td>2000</td>
</tr>
<tr>
<td>Trifluorotoluene</td>
<td>0</td>
<td>6 ppb</td>
<td>0</td>
<td>6 ppb</td>
</tr>
<tr>
<td>TTHMs or Total chloroforms</td>
<td>100</td>
<td>1000</td>
<td>0</td>
<td>1000/900</td>
</tr>
<tr>
<td>Toluene</td>
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<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>2</td>
<td>1000</td>
<td>0</td>
<td>1000</td>
</tr>
<tr>
<td>Xylenes</td>
<td>10</td>
<td>10 ppm</td>
<td>0</td>
<td>10 ppm</td>
</tr>
</tbody>
</table>

For a system that serves >10,000 people and that uses as its source water or groundwater under the direct influence of surface water, monitoring shall be conducted under the following conditions:

- If the system serves >10,000 people and uses as its source water or groundwater under the direct influence of surface water, monitoring shall be conducted under the following conditions:

- For systems that serve >10,000 people and use as its source water or groundwater under the direct influence of surface water, monitoring shall be conducted under the following conditions:

Key:
AL = action level
MCL = maximum contaminant level
MCLG = maximum contaminant level goal
MFL = million fibers per liter
MRDL = maximum residual disinfectant level
MRDLG = maximum residual disinfectant level goal
mg/L = milligrams per liter, a measure of mass absorbed by the body
n/a = not applicable
NTU = nephelometric turbidity units, a measure of water clarity
pCi/L = picocuries per liter, a measure of radioactivity
ppm = parts per million, or milligrams per liter, mg/L
ppb = parts per billion, or micrograms per liter, μg/L
ppt = parts per trillion, or nanograms per liter
ppq = parts per quadrillion, or picograms per liter
TT = treatment technique

1. The MCL for that contaminant expressed as a number equal to or greater than one and zero tenths (1.0), as provided in Table A1.
2. The MCL for that contaminant expressed in the same units as the MCL.
3. a. If there is no MCL for a detected contaminant, the table shall indicate that there is no treatment technique, or specify the action level applicable to that contaminant.
4. a. For a contaminant subject to an MCL, except turbidity, total organic compounds, and total coliforms, the highest contaminant level used to determine compliance with 401-KAR 8-010 to 401-KAR 8-660 and the range of detected levels, as indicated in this subparagraph, expressed in the same unit as the MCL.
5. a. If a result is rounded to determine compliance with the MCL, the result shall be determined by calculating the result as a whole number. The result shall be reported to the nearest whole number.
6. a. For total organic carbon, TOC, or TOC-OC, the lowest running annual average of the percent removal of TOC-OC, achieved by the percent removal required, calculated quarterly, the range of the monthly ratios, and an explanation of the treatment technique, and the likely source of each detected contaminant, to the best of the operator’s knowledge. Any information on the likely source may be consistent with the system collecting fewer than forty (40) samples per month, or the system collecting at least forty (40) samples per month.
8. a. For total organic carbon, the total number of positive samples for systems collecting fewer than forty (40) samples per month, or the system collecting at least forty (40) samples per month.
10. The likely source of each detected contaminant, to the best of the operator’s knowledge. Specified information on a contaminant may be consistent with the system collecting fewer than forty (40) samples per month.
<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Major-Source-in-Drinking-Water</th>
<th>Health Effects Language</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Microbiological contaminants</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. coli</td>
<td>Naturally present in the environment</td>
<td>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed by state regulations, and this was a warning of potential problems.</td>
</tr>
<tr>
<td>Fecal-ecoli and E. coli</td>
<td>Human and animal fecal waste</td>
<td>Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal waste. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.</td>
</tr>
<tr>
<td>Total organic carbon</td>
<td>Naturally present in the environment</td>
<td>Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes, or THMs, and haloacetic acids, or HAAs. Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Turbidity</td>
<td>Soil-runoff</td>
<td>Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and protozoa that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.</td>
</tr>
<tr>
<td><strong>Radioactive contaminants</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beta or photon emitters</td>
<td>Decay of natural and man-made deposits</td>
<td>Certain minerals are radioactive and may emit forms of radiation known as beta and photon radiation. Some people who drink water containing beta particles or photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Alpha emitters</td>
<td>Erosion of natural deposits</td>
<td>Certain minerals are radioactive and may emit forms of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Combined radium</td>
<td>Erosion of natural deposits</td>
<td>Some people who drink water containing radium-226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Uranium</td>
<td>Erosion of natural deposits</td>
<td>Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.</td>
</tr>
<tr>
<td><strong>Inorganic contaminants</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antimony</td>
<td>Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder</td>
<td>Some people who drink water containing antimony well in excess of the MCL over many years could experience increased blood cholesterol and decreases in blood sugar.</td>
</tr>
<tr>
<td>Arsenic</td>
<td>Erosion of natural deposits; runoff from orchards; runoff from glass and electronics production wastes</td>
<td>Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Asbestos</td>
<td>Decay of asbestos cement; water mains; erosion of natural deposits</td>
<td>Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign-intestinal polyps.</td>
</tr>
<tr>
<td>Barium</td>
<td>Discharge of diling wastes; discharge from metal refineries; erosion of natural deposits</td>
<td>Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.</td>
</tr>
<tr>
<td>Beryllium</td>
<td>Discharge from metal refineries and coal burning factories; discharge from electrical, aerospace, and defense industries</td>
<td>Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.</td>
</tr>
<tr>
<td>Bromate</td>
<td>By-product of drinking-water disinfection</td>
<td>Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of cancer.</td>
</tr>
<tr>
<td>Cadmium</td>
<td>Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; run-off from waste batteries and pipes</td>
<td>Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.</td>
</tr>
<tr>
<td>Chloramines</td>
<td>Water additive used to control microorganisms</td>
<td>Some people who use water containing chloramines well in excess of the MRDL could experience irritation to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.</td>
</tr>
<tr>
<td>Chlorme</td>
<td>Water additive used to control microorganisms</td>
<td>Some people who use water containing chlorme well in excess of the MRDL could experience irritation to their eyes and nose. Some people who drink water containing chlorme well in excess of the MRDL could experience stomach discomfort.</td>
</tr>
<tr>
<td><strong>VOLUME 35, NUMBER 6 – DECEMBER 1, 2008</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Chlorine-dioxide</strong> Water additive used to control microbes. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous-system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Chlorite</strong> Byproduct of drinking-water disinfection. Some infants and young children who drink water containing chlorine in excess of the MCL could experience nervous-system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine in excess of the MCL. Some people may experience anemia.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Chromium</strong> Discharge from steel and pulp mills, erosion of natural deposits. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Copper</strong> Corrosion of household-plumbing systems; erosion of natural deposits. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson’s Disease should consult their personal doctor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cyanide</strong> Discharge from steel and metal factories; discharge from plastic and fertilizer factories. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fluoride</strong> Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories. Some people who drink water containing fluorides in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluorides in drinking water at half the MCL or more may cause mottling of children’s teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Lead</strong> Corrosion of household-plumbing systems; erosion of natural deposits. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Mercury, inorganic</strong> Erosion of natural deposits; discharge from refineries and factories; runoff from landfills; runoff from cropland. Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nitrate</strong> Runoff from fertilizer use, leaching from septic tanks, sewage, erosion of natural deposits. Infants below the age of six months who drink water containing nitrates in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nitrite</strong> Runoff from fertilizer use, leaching from septic tanks, sewage, erosion of natural deposits. Infants below the age of six months who drink water containing nitrites in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Selenium</strong> Discharge from petroleum and metal refineries, erosion of natural deposits; discharge from mines. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Thallium</strong> Leaching from ore processing sites; discharge from electronics, glass, and drug factories. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Synthetic organic contaminants including pesticides and herbicides</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2,4-D</strong> Runoff from herbicide used on row crops. Some people who drink water containing the wood kiler 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2,4,5-T, or Silvex</strong> Residue of banned herbicide. Some people who drink water containing Silvex in excess of the MCL over many years could experience liver problems.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Acrelides</strong> Added to water during sewage or wastewater treatment. Some people who drink water containing high levels of acrelides over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Alachlor</strong> Runoff from herbicide used on row crops. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Atrazine</strong> Runoff from herbicide used on row crops. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Benzo(a)pyrene, or PAH</strong> Leaching from lagoons of water storage tanks and distribution lines. Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Carboluran</strong> Leaching of coal-fumigant used on Some people who drink water containing carboluran in excess of the MCL over many years could experience problems with their nervous system or blood, and may have an increased risk of getting cancer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Herbicide</td>
<td>Description</td>
<td>Health Effects</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Chlordane</td>
<td>Residue of banned termiteicide</td>
<td>Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Dalapon</td>
<td>Runoff from herbicide used on rice and alfalfa</td>
<td>Some people who drink water containing dalapon well in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Di-(2-ethylhexyl) adipate</td>
<td>Discharge from chemical factories</td>
<td>Some people who drink water containing Di-(2-ethylhexyl) adipate well in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Di-(2-ethylhexyl) phthalate</td>
<td>Discharge from rubber and chemical factories</td>
<td>Some people who drink water containing Di-(2-ethylhexyl) phthalate well in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Dibromochloropropane</td>
<td>Runoff from herbicide used on soybeans, cotton, pineapple, and orchards</td>
<td>Some people who drink water containing DBCP in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Dinoeb (Desmethylchlordane)</td>
<td>Runoff from herbicide used on soybeans and vegetables</td>
<td>Some people who drink water containing dinoeb well in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Diquat</td>
<td>Runoff from herbicide use</td>
<td>Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.</td>
</tr>
<tr>
<td>Dioxin, or 2,3,7,8 TCDD</td>
<td>Emissions from waste incineration and other combustion—discharge from chemical factories</td>
<td>Some people who drink water containing dioxin in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Endothall</td>
<td>Runoff from herbicide use</td>
<td>Some people who drink water containing endothall well in excess of the MCL over many years could experience problems with their stomach or intestine.</td>
</tr>
<tr>
<td>Endrin</td>
<td>Residue of banned insecticide</td>
<td>Some people who drink water containing endrin well in excess of the MCL over many years could experience problems with their stomach or intestine.</td>
</tr>
<tr>
<td>Epichlorohydrin</td>
<td>Discharge from industrial chemical factories; an impurity of some water treatment chemicals</td>
<td>Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylene dibromide</td>
<td>Discharge from petroleum refineries</td>
<td>Some people who drink water containing ethylene dibromide well in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidney, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Glyphosate</td>
<td>Runoff from herbicide use</td>
<td>Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their liver or nervous system.</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>Residue of banned pesticide</td>
<td>Some people who drink water containing heptachlor well in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Heptachlor epidote</td>
<td>Breakdown of heptachlor</td>
<td>Some people who drink water containing heptachlor epidote well in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>Discharge from metal refineries and agricultural chemical factories</td>
<td>Some people who drink water containing hexachlorobenzene well in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Hexachlorocyclopentadiene</td>
<td>Discharge from chemical factories</td>
<td>Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Lindane</td>
<td>Runoff or leaching from insecticide used on cattle, lumber, gardens</td>
<td>Some people who drink water containing lindane well in excess of the MCL over many years could experience problems with their liver, or respiratory-system-difficulties.</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>Runoff from herbicide used on rice, vegetables, alfalfa, livestock</td>
<td>Some people who drink water containing methoxychlor in excess of the MCL over many years could experience problems with their liver, or respiratory-system-difficulties.</td>
</tr>
<tr>
<td>Oxyamyl, or Vystane</td>
<td>Runoff or leaching from insecticide used on apples, potatoes, and tomatoes</td>
<td>Some people who drink water containing oxyamyl in excess of the MCL over many years could experience problems with their liver, or respiratory-system-difficulties.</td>
</tr>
<tr>
<td>PCBs, or Polychlorinated biphenyls</td>
<td>Runoff from landfills, discharge of waste chemicals</td>
<td>Some people who drink water containing PCBs in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Penta-chlorophenol</td>
<td>Discharge from wood preserving factories</td>
<td>Some people who drink water containing penta-chlorophenol well in excess of the MCL over many years could experience problems with their liver, or reproductive-difficulties.</td>
</tr>
<tr>
<td>Compound</td>
<td>Source Description</td>
<td>Health Effects</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Simazine</td>
<td>Runoff or leaching from insecticide used on cotton and cattle</td>
<td>Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their liver, or thyroid, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>Runoff or leaching from insecticide used on cotton and cattle</td>
<td>Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Volatile organic contaminants</td>
<td>Discharge from factories and leaching from gas storage tanks and landfills</td>
<td>Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Benzene</td>
<td>Discharge from factories and leaching from gas storage tanks and landfills</td>
<td>Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>Discharge from chemical plants and other industrial activities</td>
<td>Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>Discharge from chemical and agricultural factories</td>
<td>Some people who drink water containing chlorobenzene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>p-Dichlorobenzene</td>
<td>Discharge from industrial chemical factories</td>
<td>Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,2-Dichlorobenzene</td>
<td>Discharge from industrial chemical factories</td>
<td>Some people who drink water containing 1,2-dichlorobenzene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
<td>Discharge from industrial chemical factories</td>
<td>Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>o,1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories</td>
<td>Some people who drink water containing o,1,2-dichloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>trans,1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories</td>
<td>Some people who drink water containing trans,1,2-dichloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Dichloromethane</td>
<td>Discharge from pharmaceutical and chemical factories</td>
<td>Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,2-Dichloropropane</td>
<td>Discharge from industrial chemical factories</td>
<td>Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td>Discharge from petroleum refinery</td>
<td>Some people who drink water containing ethylbenzene in excess of the MCL over many years could experience problems with their liver or kidneys.</td>
</tr>
<tr>
<td>Haloacetic acids, or HAA</td>
<td>Byproduct of drinking-water disinfection</td>
<td>Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Styrene</td>
<td>Discharge from rubber and plastic factories and leaching from landfills</td>
<td>Some people who drink water containing styrene in excess of the MCL over many years could have problems with their liver, kidney, or circulatory system.</td>
</tr>
<tr>
<td>Tetrahydroethylene</td>
<td>Discharge from factories and dry cleaners</td>
<td>Some people who drink water containing tetrahydroethylene in excess of the MCL over many years could have problems with their liver, kidney, or circulatory system.</td>
</tr>
<tr>
<td>Ethylenebenzene</td>
<td>Discharge from petroleum refinery</td>
<td>Some people who drink water containing ethylenebenzene in excess of the MCL over many years could experience problems with their liver or kidneys.</td>
</tr>
<tr>
<td>Toluene</td>
<td>Discharge from petroleum facilities</td>
<td>Some people who drink water containing toluene in excess of the MCL over many years could have problems with their nervous system, kidney, or liver.</td>
</tr>
<tr>
<td>Compound</td>
<td>Leaching from PVC piping, discharge from plastic-factories</td>
<td>Some people who drink water containing ( \text{vinyl chloride} ) in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Xylene</td>
<td>Discharge from petrochemical, discharge from chemical factories</td>
<td>Some people who drink water containing ( \text{xylene} ) in excess of the MCL over many years could experience damage to their nervous system.</td>
</tr>
</tbody>
</table>

**Key:**
- AL = action level
- MCL = maximum contaminant level
- MCLG = maximum contaminant level goal
- MFL = million liters per liter
- MRDL = maximum residual disinfectant level
- MRDLG = maximum residual disinfectant level goal
- mrem/y = millirem per year, a measure of radiation absorbed by the body
- NPL = not present
- NTU = nephelometric turbidity unit, a measure of water clarity
- pCU = parts per million, or milligrams per liter, mg/l
- ppb = parts per billion, or micrograms per liter, mg/l
- ppt = parts per trillion, or nanograms per liter
- ppm = parts per million, or micrograms per liter
- TT = treatment technique

(1) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area, and the report shall identify each separate distribution system.

2. A system may produce separate reports tailored to include data for each service area or use another mechanism to clearly indicate the detections from the various water sources.

(1) If a table clearly identifies the data indicating violations of MCLs, MRDLs, or treatment technologies.

2. The report shall contain a clear and readily understandable explanation of the violation, including:
   a. The length of the violation;
   b. The potential adverse health effects; and
   c. Actions taken by the system to address the violation.

3. To describe the potential health effects, the system shall use the relevant language from Table B above for the contaminant that has a violation.

(2) For detected unregulated contaminants for which monitoring is required, except Cryptosporidium, the table shall contain the average and range of concentrations at which the contaminant was detected.

2. The report may include a brief explanation of the reason for monitoring for unregulated contaminants.

(3) Information on Cryptosporidium, radon, and other contaminants:

(a) If the system has performed monitoring for Cryptosporidium and monitoring indicates that Cryptosporidium may be present in the source water or the finished water, the report shall include:
   1. A summary of the results of the monitoring; and
   2. An explanation of the significance of the results.

(b) If the system has performed monitoring for radon that indicates that radon may be present in the finished water, the report shall include:
   1. The results of the monitoring; and
   2. An explanation of the significance of the results.

(c) If the system has performed additional monitoring that indicates the presence of another contaminant in the finished water, a system shall report results that may indicate a health concern.

2. The system shall contact the Safe Drinking Water Hotline, 800-426-4791, to determine if U.S. EPA has proposed a rational primary drinking water regulation or issued a health advisory for that contaminant.

3. Detection above a proposed MCL or health advisory level indicate a possible health concern. For that contaminant, the report shall include:
   a. The results of the monitoring; and
   b. An explanation of the significance of the results noting the existence of a health advisory or proposed federal regulation.

(4) Compliance with 401 KAR 8 010 to 401 KAR 8 650: In addition to the requirements of subsection (2)(f) of this section, the report shall note a violation that occurred during the year covered by the report of a requirement listed in paragraphs (a) through (g) of this subsection and include a clear and readily understandable explanation of the violation, a potential adverse health effect, and the steps the system has taken to correct the violation.

(a) Monitoring and reporting of compliance data.

(b) Filtration and disinfection prescribed by 401 KAR 8 1650.

For a system that failed to install adequate filtration or disinfection equipment or processes, or has a failure of the filtration or disinfection equipment or processes that constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects:

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(c) Load and copper control requirements prescribed by 401 KAR 8 300.

For a system that fails to take one (1) or more actions prescribed by 401 KAR 8 300, Sections 2(b), 3, 4, 5, or 6, the report shall include the applicable language of subsection (d) (f) of this section for lead, copper, or both.

(d) Treatment techniques for acrylamide and epichlorohydrin prescribed by 401 KAR 8 490.

For a system that violates the requirements of 401 KAR 8 490, Section 2, the report shall include the relevant language from subsection (3)(f) of this section.

(e) Recordkeeping of compliance data.

(f) Special monitoring requirements of 40 C.F.R. 141.40, October 26, 2002, and 401 KAR 8 260, Section 15.

(g) Violation of a term of a variance, an exemption, or an administrative or judicial order.

(h) Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued under 401 KAR 8 650, the report shall contain:
   a. An explanation of the reason for the variance or exemption;
   b. The date on which the variance or exemption was issued;
   c. A brief status report on the steps the system is taking to install treatment, find an alternative source of water, or otherwise comply with the terms and schedules of the variance or exemption; and
   d. A notice of opportunity for public input in the review or renewal of the variance or exemption.

(7) Additional information:

(a) The report shall contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water.

2. The explanation may include the language of subparagraph (a) through (d) of this paragraph, or a system may use its own comparable language.

3. The report shall include the language of clause d of this
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subparagraph, as a separate paragraph.

a. The sources of drinking water—both tap water and bottled water—include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and—in some cases—radioactive material, and may pick-up substances resulting from the presence of animals or from human activity.

b. Contaminants that may be present in source water include:
   (i) Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.
   (ii) Inorganic contaminants, such as salts and metals, that may be naturally occurring or result from urban stormwater runoff, industrial or commercial activities, wastewater discharges, and mining or farming.
   (iii) Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential use.
   (iv) Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and may also come from gas stations, urban stormwater runoff, and septic systems.
   (v) Radioactive contaminants, which may be naturally occurring or be the result of oil and gas production and mining activities.

e. To ensure that tap water is safe to drink, U.S. EPA-proposed regulations that limit the amount of certain contaminants in water provided by public water systems.

f. U.S. EPA, in consultation with U.S. FDA regulations, establish limits for contaminants in bottled water that shall provide the same protection for public health.

g. Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects may be obtained by calling the Environmental Protection Agency’s Safe Drinking Water Hotline at 800-426-4791.

h. The report shall include the number of the owner, operator, or designate of the community water system as a source of additional information about the report.

i. If a system has a significant proportion of non-English speaking residents, the system shall include in the report information in the appropriate language regarding the importance of the report or contain a telephone number or address where non-English speaking residents may contact the system to obtain a translated copy of the report or assistance in the language.

ej. The report shall include information, including time and place of regularly scheduled board meetings, about opportunities for public participation in decisions that may affect the quality of the water.

f. A system may include additional information necessary for public education consistent with, and not distracting from, the purpose of the report.

Section 3. Additional Health Information. (1) A report shall prominently display the following language as a separate paragraph: "Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health-care providers. EPA/HEEL guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791)."

(2) A system that detects arsenic above 0.010 mg/L shall:
   (a) Include in its report a short informational statement about arsenic, using language such as: "While your drinking water meets EPA’s standard for arsenic, it does contain low-levels of arsenic. EPA’s standard balances the current understanding of arsenic’s possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.
   (b) Write its own educational statement that shall be approved by the cabinet, with criteria for approval in accordance with 40 C.F.R. 141.164(2), March 26, 2003, before including it in the report.

(3) A system that detects nitrate at levels above five (5) mg/L, but below the MCL shall:
   (a) Include a short informational statement about the impacts of nitrates on children’s health language such as: "Nitrate in drinking water at levels above ten (10) ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health-care provider.
   (b) Write its own educational statement that shall be approved by the cabinet, with criteria for approval in accordance with 40 C.F.R. 141.164(2), March 26, 2003, before including it in the report.

(4) A system that detects lead above the action level in more than five (5) percent, and up to and including ten (10) percent, of homes sampled shall:
   (a) Include a short informational statement about the special impact of lead on children using language such as: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home’s plumbing. If you are concerned about elevated lead levels in your home’s water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline, 800-426-4791, or...
   (b) Write its own educational statement that shall be approved by the cabinet, with criteria for approval in accordance with 40 C.F.R. 141.164(2), March 26, 2003, before including it in the report.

(5) Beginning in the report due after January 4, 2005, and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and including 0.05 mg/L shall include the health effects language for arsenic prescribed by Section 2(c)(d)(c) of this administrative regulation.

Section 4. Report Delivery and Recordkeeping. (1) Except as provided in subsection (6) of this section, a community water system shall mail or otherwise directly deliver a copy of the report to each customer.

(2) The system shall also make a good-faith effort to reach consumers who do not get water bills. A good-faith effort shall be tailored to the consumer who is served by the system, but is not a bill-paying customer, such as a renter or worker. The system shall describe the good-faith efforts in the certification required in subsection (3) of this section. The good-faith efforts shall be made in addition to the distribution method that is used by the system to distribute its report as required for the size of the system. A good-faith effort to reach consumers may be a mix of methods appropriate to the particular system, such as:
   (a) Posting the report on the Internet;
   (b) Mailing to postal patrons in metropolitan areas;
   (c) Advertising the availability of the report in the news media;
   (d) Publishing the report in a local newspaper;
   (e) Posting in a public place such as a cafeteria or lunch room of a public building;
   (f) Delivering of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers; or
   (g) Delivering the report to a community organization; or
   (h) Other means that accomplish the goal of notifying the consumer as described in 40 C.F.R. 141.164(a) and (b), May 4, 2000.
customers, but not later than the date specified in Section 1-2(a) of this administrative regulation, the community water system shall also mail a copy of the report and the certification required in paragraph (b) of this subsection to the cabinet at the following address: Division of Water—Drinking Water Branch, Attn: CCR—14 Reilly Road, Frankfort, Kentucky 40601.

2. The system shall include a copy of the report and certification for each PWSID in the system and shall include the name of the system and its PWSID number on all submittals.

3. The system shall mail the report or the certification to the cabinet until it has distributed the report to its customers.

(b) Certification

1. The community water system shall mail a certification to the cabinet by July 1 annually.

2. The certification shall include the typed or printed name and title of the person responsible for the overall operation and management of the system and shall be signed by that person. The certification shall contain the following documentation:

   a. A statement of the number of customers served by the system;

   b. The following statements that shall be true for the system if the system cannot make the true statement, then it shall notify the cabinet:

      1. The system is operating within the requirements of the administrative regulation and has a system compliance rating of 100 or greater.

      2. The system provided notice to its customers at least once per year before the date specified by Section 1 of this administrative regulation by mail, door-to-door delivery, or by posting in an appropriate location that the report is available upon request.

      3. A community water system shall retain a copy of its consumer confidence report and certification for at least three (3) years.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008
PUBLIC HEARING: 10/12/08
COMMENTS DUE: 10/19/08
PUBLIC HEARING DATES:
December 22, 2008 at 10 a.m. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by December 15, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzeskzyk, Director

1. Provide a brief summary of:

   a. What this administrative regulation does: This administrative regulation requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customers and on the public water system's compliance with national primary drinking water regulations established pursuant to the Safe Drinking Water Act.

   b. The necessity of this administrative regulation: Reports to the public allow public water systems to keep their customers informed of issues relevant to the water system's operation.

   c. How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 et seq. and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: Consumer confidence reports allow consumers to stay abreast of issues pertaining to their drinking water.

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

   a. How the amendment will change this existing administrative regulation: This amendment makes the following changes to the regulation, which were initially promulgated in 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use.

   b. The necessity of the amendment to this administrative regulation: The Cabinet believes that this will allow future federal changes in regulatory requirements to be more easily adopted.

   c. How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: Consumer confidence reports allow consumers to stay abreast of issues pertaining to their drinking water.

3. If 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 makes the following changes to the regulation, which were initially promulgated in 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use.

   b. The necessity of the amendment to this administrative regulation: The Cabinet believes that this will allow future federal changes in regulatory requirements to be more easily adopted.

   c. How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: Consumer confidence reports allow consumers to stay abreast of issues pertaining to their drinking water.

   e. How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
exception does not change the requirements of the existing regulation. The amendments require public water systems to deliver information about the water that is being delivered to the water system's customers.

(d) How the amendment will assist in the effective administration of these statutes? The Cabinet believes that using federal citations with exceptions will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 491 public water systems.

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

(a) List 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 amendments to this administrative regulation use federal citations instead of recreating federal language in the body of the state regulation. Although an exception to the federal requirements is made, the exception does not change the requirements of the currently effective administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation remain unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit by clearly seeing where the requirements of this administrative regulation are different than the federal requirements.

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

(a) Initially: The requirements of this administrative regulation remain unchanged from the currently effective regulation. Costs of implementation will remain the same.

(b) On a continuing basis: The requirements of this administrative regulation remain unchanged from the regulation currently in place. Costs of implementation will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 not necessary.

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

(9) TIERING: Is tiering applied? Yes. This administrative regulation differs in requirements for community water systems, non-community water systems, transient non-community water systems, and for systems of different size.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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 applies to public water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

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(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300q-26) requires the establishment of national primary drinking water systems. 40 C.F.R. 141 Subpart O, Sections 141.151 through 141.155, including Appendix A, requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customer and on the public water system's compliance with national primary drinking water regulations.

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

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

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

(c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation are a change in format; although an exception to the federal requirements is made, the exception does not change the requirements of the existing regulation or impose any additional cost for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation are a change in format; although an exception to the federal requirements is made, the exception will not change the requirements of the existing regulation or impose 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. Chapter 6A, Subchapter XII, The Safe Drinking Water Act, and 40 C.F.R. 141 Subpart O, Sections 141.151 through 141.155, including Appendix A, requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customer and on the public water system's compliance with national primary drinking water regulations established pursuant to the Safe Drinking Water Act.

2. 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 regulation does not introduce any requirements more stringent than the federal regulation. However, the existing regulation does contain a requirement that is different from the federal regulation, and that requirement is not changing. The federal regulation requires that a copy of the consumer confidence report be "mailed" to the cabinet at the same time that the report is delivered to the water system's consumers. A certification that information in the report is correct must be submitted to the cabinet within three months. This regulation requires that both the report and the certification shall be received by the cabinet within 14 days after the report is delivered to the customers.

3. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Although 40 C.F.R. 141.155(c) requires public water systems to mail the consumer confidence report to the primary agency at the same time as the public water system delivers the report to its customers, and requires certification of the reports accuracy within three months of that time, the cabinet has no definitive way to be sure this has
occurred. Consequently, this administrative regulation requires that the cabinet receive the report within 14 days of the report being delivered to the water system's customers. Since the certification simply is a statement that the report is accurate, which they are required to be, the cabinet considers the requirement that the certification be received in the same time period to be reasonable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:150. Disinfection, filtration, and recycling.


STATUTORY AUTHORITY: KRS 224.10-100(29)(30) and 224.10-110(2) authorize the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations for the regulation and control of the purification of public and semipublic water supplies. The Environmental and Public Protection Cabinet is authorized by KRS 330.100, effective June 16, 2008, to promulgate the regulations as necessary for the protection of public health; quality of water; and performance of the public and semipublic water systems. 401 KAR 8:150 by 401 KAR 8:151, effective June 16, 2008.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(29)(30) and 224.10-110(2) authorize the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations for the regulation and control of the purification of public and semipublic water supplies. The Environmental and Public Protection Cabinet promulgated the regulations effective June 16, 2008, in accordance with KRS 330.100, effective June 16, 2008.

Section 1. Disinfection. A public and semipublic water system shall provide disinfection, except as provided in this section. A semipublic water system shall comply [with the requirements of this section] with the requirements of this section for public systems. (a) A public water system using groundwater or surface water as a source.

1. Use continuous automatic disinfection by chlorination.
2. Provide a minimum free chlorine residual of two tenths (0.2) milligrams per liter, or ppm, throughout the distribution system measured as described in subsection (2) of this section.
3. Provide a contact period of at least thirty (30) minutes between the chlorine and the water to allow adequate time for disinfection.
4. Check free chlorine residuals daily at representative points throughout the system; and
5. Report the free chlorine residuals monthly pursuant to 401 KAR 8:20, Section (7)(j)(4)(a).

(b) Disinfecting agents other than chlorine may be used, such as 1-chloramine and chlorhexidine, may be acceptable pursuant to conditions established by the cabinet prior to January 1, 2009.

If chloramination is used, a minimum combined residual of five tenths (0.5) milligrams per liter, or ppm, shall be provided throughout the distribution system.

(c) A public water system using surface water as a source or groundwater under the direct influence of surface water shall provide disinfection treatment as established in 40 C.F.R. 141.72(b), effective July 1, 2007.

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(3) follows:
(a) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation or removal of viruses, in accordance with 40 C.F.R. 141.72(b), effective July 1, 2007, consistent with the "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Groundwater Sources."
(b) The residual disinfectant concentration in the water entering the distribution system measured as specified in Section 3(1) of this administrative regulation shall not be less than required by subsection (1) of this section. (3) and (4) of this section, and 40 C.F.R. 141.72(b), effective July 1, 2007.
(c) The residual disinfectant concentration in the distribution system measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide as specified in Section 3(1) of this administrative regulation shall not be less than two tenths (0.2) milligrams per liter, or ppm, in more than five (5) percent of the samples each month, for two (2) consecutive months that the system serves water to the public.

2. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count, or HPC, as specified in Section 3(1) of this administrative regulation, shall be deemed to have an adequate disinfectant residual for purposes of determining compliance with this requirement.

3. The value, $V$, in the following formula shall not exceed five (5) percent in one (1) month for two (2) consecutive months.

$$V = \frac{c + d + e}{a + b} \times 100$$

where:
- $a$ = number of instances that the residual disinfectant concentration is measured;
- $b$ = number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or HPC, is measured;
- $c$ = number of instances that the residual disinfectant concentration is measured but does not measure at least two tenths (0.2) milligrams per liter, or ppm, or the equivalent, and HPC is not measured;
- $d$ = number of instances that residual disinfectant concentration is below two tenths (0.2) milligrams per liter, and where the HPC is greater than 500/ml; and
- $e$ = number of instances that the residual disinfectant concentration is not measured, and HPC is greater than 500/ml.

4. A system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the required time and temperature conditions specified in Section 3(1) of this administrative regulation, and the system is providing adequate disinfection in the distribution system as required by 40 C.F.R. 141.72(b)(3)(i), June 29, 2004, the requirements of paragraph (a) of this subsection shall not apply.

5. A disinfection residual fails to comply with Section 1(1) of this administrative regulation, the public shall be notified in accordance with 401 KAR 8:20, Section 2(9).

6. Subsection (3) Variances or exemptions shall not be granted for subsection (2) of this section.

7. In addition to the requirements of this administrative regulation, a public water system that serves fewer than 10,000 people shall comply with the requirements in 401 KAR 8:162.

Section 2. Filtration. (1) A public water system using a surface water source or a groundwater system under the direct influence of surface water shall establish a filtration system. The design for the system shall be submitted to the cabinet in accordance with 401 KAR 8:100 and shall comply with 40 C.F.R. 141.72, effective July 1, 2007.

(2) The subsection.
monitoring for grab sample monitoring, it shall validate the continuous measurement for accuracy on a regular basis using a protocol approved pursuant to 40 C.F.R. 141.74, June 29, 2004.

3. In addition, a system using continuous monitoring shall submit to the cabinet a schedule of times when the monitoring will be performed.

4. The schedule shall reflect monitoring at least every four (4) hours the system serves water to public.

5. If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing that less frequent monitoring is sufficient to indicate effective filtration performance in accordance with 40 C.F.R. 141.74(c)(1), June 29, 2004.

(b) The residual disinfectant concentration of the water entering the distribution system shall be monitored by a public water system continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four (4) hours may be conducted in lieu of continuous monitoring, but for not more than five (5) working days following the failure of the equipment. The grab samples shall be taken for 2,000 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day proceeds below:

<table>
<thead>
<tr>
<th>System Size by Population</th>
<th>Samples/Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 600</td>
<td>4</td>
</tr>
<tr>
<td>601 to 1,000</td>
<td>2</td>
</tr>
<tr>
<td>1,001 to 2,500</td>
<td>3</td>
</tr>
<tr>
<td>2,501 to 2,999</td>
<td>4</td>
</tr>
</tbody>
</table>

2. The day's samples shall not be taken at the same time.

3. The sampling intervals shall be subject to cabinet review and approval in accordance with 40 C.F.R. 141.74(c)(3), June 29, 2004.

4. If the residual disinfectant concentration falls below the requirements of Section 3(1) of the administrative regulation, a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four (4) hours until the residual disinfectant concentration meets the requirements of Section 3(1) of the administrative regulation.

(c) The residual disinfectant concentration shall be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 401 KAR 8:200, except that the cabinet may allow a public water system which uses both a surface water source and a ground water source under direct influence of surface water or a surface or a ground water source to take disinfectant residual samples at points other than the total coliform sampling points if the cabinet determines in writing that the points are more representative of treated, or disinfected, water quality within the distribution system. Criteria for determining sampling points representing treated water quality in the distribution system shall be as established in 40 C.F.R. 141.74(c)(3)(iii), June 29, 2004.

2. Heterotrophic bacteria, measured as heterotrophic plate count, or HPC as specified in subsection (b) of this section, may be measured in lieu of residual disinfectant concentration.

4. If the cabinet determines in writing, based on site-specific conditions in accordance with 40 C.F.R. 141.74(c)(9), June 29, 2004, that a system is using grab sampling in lieu of continuous monitoring in accordance with subsection (1) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply to that system.

Section 4. Disinfection of New and Repaired Water Lines

1. New construction projects and line extensions.

(a) Disinfection of water lines. A water distribution system, including storage distribution tanks, or all extensions to existing
systems, shall be thoroughly disinfected before being placed in service.

(b) A water distribution system shall disinfect with chlorine or chlorine compounds in amounts that shall produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing.

(c) Other methods and testing procedures that provide an equivalent level of protection may be used if the cabinet grants prior written approval in accordance with 40 C.F.R. 141.21, effective July 1, 2007 [November 8, 2006].

(d) A new water distribution line shall not be placed into service until bacteriological samples taken at the points specified in paragraph (f) of this subsection are examined and are shown to be negative following disinfection.

(e) A water distribution system shall submit to the cabinet results of bacteriological samples for each new construction project, replacement, or extension to existing systems, after the disinfection and flushing.

(f) A sample shall be taken in the newly[-]constructed line at each of the following points:

1. Within 1,200 foot downstream of each connection point between the existing and new lines;
2. One (1) mile intervals; and
3. Each dead end, without omitting any branch.

(g) A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses.

(h) Sample bottles shall be clearly identified as “special” construction tests, and the results submitted to the cabinet shall be clearly marked as “special” samples.

(i1) Notification of analytical results shall be submitted to the cabinet with the routine monthly compliance bacteriological samples, unless the bacteriological samples are to be used to lift a boil water advisory.

2. Samples used to lift a boil water advisory shall be submitted to the cabinet as soon as results are known.

(2) Line repairs due to breaks or ruptures.

(a) The system shall thoroughly flush the break area and maintain at least a minimum disinfectant residual, pursuant to Section 1(1) of this administrative regulation.

(b) The system may leave the line in service or return the line to service before receiving bacteriological results and may forego a boil water advisory if:

1. Pressure is maintained,
2. The break area is thoroughly flushed; and
3. At least the minimum disinfectant residual is maintained, pursuant to Section 1(1) of this administrative regulation.

(c1) The system shall take at least two (2) bacteriological tests, one (1) located before, or just upstream of, the break or rupture, and one (1) located behind, or just downstream of, the break or rupture, as close to the break or rupture as practical pursuant to 40 C.F.R. 141.21, effective July 1, 2007 [November 8, 2006]. Additional samples may be required, if necessary to be representative of the area affected by the break.

2. Sample bottles shall be clearly identified as “special” tests, and the results submitted to the cabinet shall be clearly marked as “special” samples.

(d) Records of results shall be submitted to the cabinet with routine monthly compliance samples, unless the samples are required to lift a boil water advisory, and shall be maintained for one (1) year.

2. Samples needed to remove a boil water advisory shall be submitted to the cabinet as soon as the results are known.

(e) A water system shall notify the cabinet immediately if:

1. The pressure drops below twenty (20) pounds per square inch in the distribution system surrounding the break; or
2. A break or rupture occurs that requires more than eight (8) hours to repair, with the eight (8) hours beginning when the water system becomes aware of the break.

(f) Boll Water Advisories shall be issued in accordance with 401 KAR 8:020, Section 2(9).

(g) Reports pursuant to 401 KAR 8:020, Section 2(7)(c) shall not be required for a loss of pressure, break, or rupture occurring in service lines serving only one (1) single family residence.

(h) A community or nontransient noncommunity public water system shall maintain a log of all breaks or ruptures, which shall include the:

a. Date and location of the break or rupture;

b. Time it was discovered;

c. Population affected;

d. Length of time required to repair the break or rupture;

e. Date and time disinfectant residuals are detected; and

f. Date and time bacteriological samples are taken.

2. The log shall be available for inspection by the cabinet.

Section 5. Uncovered Facility. A public or semipublic water system subject to this administrative regulation shall not begin construction of an uncovered finished water storage facility.


Section 7. In addition to the other requirements of this administrative regulation, for disinfection and filtration, a public water system that uses surface water as a source and that serves 10,000 or more persons, shall meet the requirements established in 40 C.F.R. 141.170, 141.172, through 141.175, and 141.65, effective July 1, 2007.

Section 8. In addition to the other requirements of this administrative regulation for disinfection and filtration, a public water system that uses surface water as a source and that serves less than 10,000 persons, shall meet the requirements established in 40 C.F.R. 141.500 through 141.571, and 141.65, effective July 1, 2007.

Section 9. A public water system that uses surface water as a source shall meet the requirements for enhanced treatment for Cryptosporidium as established in 40 C.F.R. 141 Subpart W, 141.700 through 141.723, effective July 1, 2007.

Section 10. A public water system that uses groundwater as a source shall comply with the requirements established in 40 C.F.R. 141.400 through 141.405, 141.65, and 141.18(2), effective July 1, 2007 [subsections (2) through (4) of this section if the public water system:

(a) Uses as its source surface water or groundwater under the direct influence of surface water;

(b) Uses conventional filtration or direct filtration treatment, and

(c) Recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes.

(2) Reporting. A system shall notify the cabinet in writing by January 4, 2006 if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. The notification shall include at least the following information:

(a) A plant schematic that shows:

1. The origin of all flows that are recycled, including:

   a. Spent filter backwash water;

   b. Thickener supernatant; and

   c. Liquids from dewatering processes;

2. The hydraulic conveyance used to recycle them, and

3. The location where they are reintroduced back into the treatment plant.

(b) Typical recycle flow, in gallons per minute, or gpm;

(c) The highest observed plant flow experienced in the previous year, gpm;

(d) Design flow for the treatment plant in gpm; and

(e) The operating capacity for the plant, if the cabinet has approved the operating capacity.

(3) Required treatment technique. A system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return those flows through the processes of a system's existing conventional or direct filtration system or an alternative location.

(4) If capital improvements are required to modify the recycle location to comply with paragraph (a) of this subsection, the capital
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Improvements shall be completed no later than June 8, 2006.

(4) Recordkeeping—The system shall collect and retain on file the following record flow information for review and evaluation by the cabinet beginning June 8, 2004:

(a) A copy of the recirculation and information submitted to the cabinet as required by subsection (2) of this section;

(b) A list of all recirculation flows and the frequency with which they are recirculated;

(c) The average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;

(d) The typical filter run-length and a written summary of how filter run-length is determined;

(e) The type of treatment provided for the recirculate flow;

(f) Data on the physical dimensions of the equalization or treatment unit;

(g) The typical and maximum hydraulic loading rates;

(h) The type of treatment chemicals used and average dose and frequency of use; and

(i) The frequency at which solids are removed, if applicable.


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

(3) This material may also be obtained from the American Water Works Association, Management Services, 6666 West Quincy Avenue, Denver, Colorado 80214, phone (303) 794-7214.

HENRY "HANK" LIST, Deputy Secretary,
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. at the Capitol Annex, Room 149, 702 Capitol Ave, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by December 15, 2008, five (5) days prior to the hearing, of their intention to attend the hearing. If the hearing is not held by December 31, 2008, a written notice by the agency shall be sent to those individuals registered to attend the hearing. Individuals interested in being heard at the hearing shall be heard on December 31, 2008, at the hearing.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzeszky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for the disinfection and filtration of water in public and semipublic water systems and recycling of spent filter backwash water, thickener supernatant, or liquids from dewatering processes.

(b) The necessity of this administrative regulation: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. This regulation sets forth requirements for filtration, disinfection, and recycling of spent filter backwash water.

(c) How this administrative regulation conforms to the content of the administrative statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The purification of drinking water consists of filtration for surface water systems to remove suspended contaminants and disinfection of both surface water and groundwater to inactivate microbiological organisms that may be harmful to public health.

(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: Many of the amendments to this regulation are to cite federal regulations instead of recreating federal language in state regulation. Two existing regulations are being proposed for repeal and codification into this regulation. The adoption of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Groundwater Rule (GWR) represent new requirements for public water systems.

(b) The necessity for this amendment to the content of the administrative statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The requirements of this administrative regulation, both state and federal, are designed to ensure the quality and microbiological purity of drinking water in public or semipublic water systems.

(c) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation are intended to consolidate three regulations into one, to provide federal citations instead of using federal language in state regulation, and to incorporate two new federal requirements for the cabinet to maintain proper documentation of the enforcement of the Safe Drinking Water Act in Kentucky. The cabinet hopes that this will facilitate the adoption of future federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects 451 public water systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Amendments that simply replace federal language in the state regulation with federal citations will not add additional duties or actions for the regulated entities. However, surface water systems will have to comply with the requirements of the LT2ESWTR. This will involve source water monitoring for Cryptosporidium and E. coli, being classified into a certain "bin" based on the results of the source water monitoring, and adding various types of treatment based on the bin classification of the water system to assure effective levels of Cryptosporidium inactivation. These systems must also establish disinfection "benchmarks" to assure that any change in treatment to meet disinfection byproduct requirements will not reduce the effectiveness of microbiological disinfection. Groundwater systems will be required to meet effective levels of virus removal or be required to do additional
monitoring and possibly add treatment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs for compliance with the LT2ESWTR will vary from system to system depending on the level of treatment required. Monitoring costs, as the initial two-year compliance fee for Cryptosporidium will be approximately $19,200 ($9,600 annually) per surface water treatment plant in water systems that serve over 10,000 in population. Total cost to Kentucky water systems serving over 10,000 in population is approximately $1.7 million (based on 81 public water systems with a total of 88 surface water treatment plants). Surface water systems serving less than 10,000 in population will have less intensive monitoring for a cost of approximately $650 for one year of required initial source water monitoring. Those small surface water systems that must monitor for Cryptosporidium will incur the same two-year cost as the larger systems ($19,200). It is not anticipated that many surface water systems will be required to install additional treatment—data to date points to less than 5%. Costs for the additional treatment were not included in the EPA due to the costs of such treatment options being variable from system to system. Costs for compliance but range from little to no cost for more effective filtration to millions of dollars to install membrane treatment. Costs for compliance with the GWR should be relatively minor in Kentucky. All surface water systems in Kentucky will report the source water monitoring six years after the initial monitoring; this will result in similar costs, plus inflation. Since all ground water systems in Kentucky are required to disinfect, there should be relatively few, if any, additional costs that have to be incurred for necessary virus inactivation. The increased costs would whether this administrative regulation is adopted or not, since the systems must comply for the U.S. Environmental Protection Agency rules if the cabinet does not receive primary enforcement responsibility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As additional surface water treatment will not be required in approximately 95% of Kentucky’s water plants for the LT2 rule, compliance costs will be incurred at only those systems on source waters with elevated Cryptosporidium levels. Those surface water systems with source water having low levels of Cryptosporidium will not incur any compliance costs. As noted in (b) above, the groundwater systems will see little change in monitoring or EPA due to the costs. Public water systems will benefit from working with the cabinet to meet these requirements as opposed to having to answer to the U.S. Environmental Protection Agency if the cabinet fails to obtain primary enforcement responsibility for these rules. In addition, public water system customers will have the assurance of being served a high quality of water as a result of the system meeting the requirements of this administrative regulation.

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

(a) Initially, Kentucky took on the early implementation activities associated with the new LT2 rule and Groundwater rule, which includes water system training, surface water monitoring plans, groundwater disinfection effectiveness and initial compliance activities. With the increased workload, Kentucky’s estimated cost approaches $200,000 annually since rule promulgation in January 2006. The cabinet does not anticipate requesting additional money for this regulation.

(b) On a continuing basis: It is anticipated that the costs for implementing the surface water treatment rules and groundwater rules on an on-going basis to be minor once the initial surface water monitoring and groundwater disinfection assessments are complete in the first year to 18 months. However the cost will increase 6 years into the LT2 regulatory timeframe with the surface water systems begin the 2nd round of monitoring. The cost will return to the initial estimate of $200,000 plus inflation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The Division of Water is funded by a combination of federal funds provided to enforce the requirements of the Safe Drinking Water Act.

(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 expected to 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 a fee or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation is tiered by type of water used as a source, and by the size of the public water system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

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(26) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the protection of water for public and semipublic water systems used for collection and operation of surface water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300q-26) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.170, 141.172-175, and 141.65 establish requirements for enhanced surface water treatment for systems serving 10,000 or more persons, which are currently in 401 KAR 8:162 which is being proposed for repeal. 40 C.F.R. 141.500-141.605 and 141.65 establish requirements for enhanced surface water treatment for systems serving less than 10,000 persons, which are currently in 401 KAR 8:162 which is being proposed for repeal. 40 C.F.R. 141.700-141.723 are new requirements of the LT2ESWTR. Finally, 40 C.F.R. 141.400-405 is the new groundwater 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 not generate any revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The initial year of monitoring will see costs of approximately $9,600 per surface water treatment plant in a water system serving over 10,000 in population. Smaller surface water systems will see first year costs of $650 per plant. Groundwater systems subject to the Ground Water Rule (GWR) will not be subject to increased costs because all groundwater systems in Kentucky are already required to disinfect.

(d) How much will it cost to administer this program for subsequent years? Surface water treatment plants in water systems serving over 10,000 in population will incur a second year of source water monitoring at an approximate cost of $3,600. Any surface water system (approximated at five (5) percent of the surface water systems in Kentucky) required to install additional treatment will incur not only the capital costs to construct but the operations, maintenance and compliance costs associated with the technique chosen. EPA has provided fifteen (15) different treatment options for complying with the LT2 rule, so costs could range from no cost to millions of dollars. In addition, the source water monitoring must be repeated at all surface water plants six years after the date of initial monitoring; costs will be similar plus inflation.
Groundwater systems should not incur significant costs unless it is determined that additional disinfection contact time is needed. This could result in the construction or modification of clearwells. Groundwater systems should see few increased costs since groundwater systems in Kentucky are required to disinfect. These costs would be incurred even without the amendment to this administrative regulation because the systems would be required to comply by the U.S. Environmental Protection Agency should the cabinet not obtain primary enforcement responsibility.

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

1. Federal statute or regulation constituting the federal mandate.
   42 U.S.C. Chapter 6A, Subchapter XII, The Safe Drinking Water Act, requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.170, 141.172-175, and 141.65 establish requirements for enhanced surface water treatment for systems serving 10,000 or more persons. 40 C.F.R. 141.500-141.605 and 141.65 establish requirements for enhanced surface water treatment for systems serving less than 10,000 persons. 40 C.F.R. 141.700-141.723 are new requirements of the LT2ESWTR. Finally, 40 C.F.R. 141.400-405 and 142.16(e) are the new groundwater regulations.

2. State compliance standards. 224.10-100(28), 224.10-110(2)Minimum or uniform standards contained in the federal mandate. The federal regulations require both surface water and groundwater systems to meet certain standards for the microbiological quality of the water or provide additional treatment or disinfection. It is possible, under the federal regulations, for surface water systems to avoid filtration and groundwater systems to avoid disinfection.

3. 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 regulation does not introduce any requirements more stringent than the federal regulation. However, the existing regulation does contain a requirement that is different from the federal regulation, and that requirement is not changing. Portions of this regulation are promulgated under KRS 224.10-110 and precede federal requirements. Because of the nature of Kentucky’s surface water the cabinet has long required filtration of surface water. Under the federal regulation, it is theoretically possible for a surface water system to avoid filtration. Similarly, because of the karstic nature of Kentucky’s groundwater geology, the cabinet has long required disinfection of groundwater. Under the federal groundwater regulation, it is possible to avoid disinfection. The cabinet also requires a higher residual disinfection level in distribution systems, two-tenths milligrams per liter, versus “detectable” in the federal regulation. The new federal provisions being adopted, the LT2ESWTR and the GWR, are identical to the federal requirements.

4. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Many of Kentucky’s public water systems depend heavily on surface water sources. Surface water sources in Kentucky have very few watershed control standards in place to protect them from various kinds of runoff contamination. Consequently, for over 33 years, the cabinet has required complete filtration and disinfection for public water sources using surface water as a source. Similarly, groundwater in Kentucky is in karstic geological formations that can allow microbiological contamination to occur. Consequently, for over 33 years, the cabinet has required disinfection of groundwater. The cabinet considers these requirements reasonable and prudent to protect public health.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:200. Microbiological monitoring.


STATUTORY AUTHORITY: KRS 224.10-110(28), 224.10-110(2), 40 C.F.R. 141.21.[Part-141-1996], 50 CFR 1557-1994, 42 U.S.C. [300f through 300l-300g, 300m-300n]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) directs the cabinet to enforce administrative regulations promulgated[adopted] by the secretary for the regulation and control of the purification of water for public and semipublic use. 40 C.F.R. 1996[and 2000-631, effective June 16, 2000], abolishes the Environmental and Public Protection and establishes the new Energy and Environment Cabinet. This administrative regulation establishes[sets-out] a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This administrative regulation also specifies requirements that test show maximum contaminant levels have been exceeded. This administrative regulation is more stringent than the corresponding federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be taken each month [conforms-to, and is no more stringent than, federal regulations]

Section 1. A public water system shall meet the requirements established in 40 C.F.R. 141.21, 141.52, and 141.63, effective July 1, 2000, except that a public water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation.

Section 2. A semipublic water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation.

Section 3. Population served shall be determined by the appropriate method established in this section.

(1) A supplier of water serving an area defined by an official census count or population projection shall use the most recent census count or official population projection.

(2) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

(3) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

(4) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

(5) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

(6) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

(7) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

(8) If a supplier of water serves an area where no official figures on population are available, or where the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 3.67 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.
proposed site. A duplicate map shall be maintained by the public water system. These maps shall be prepared on Kentucky county maps scale: 48,500 (1 inch = 1 mile) or on city maps. These maps may be obtained from the Kentucky Transportation Cabinet, Map Sales, 419 Ann Street, Frankfort, Kentucky 40601. The cabinet may waive this requirement in writing for systems with less than five (5) service connections or which serve a population of less than 600 people.

(2) The monitoring frequency for total coliforms for public water systems shall be based on the population served by the system as follows:

<table>
<thead>
<tr>
<th>Population Served</th>
<th>Minimum Number Monthly Samples</th>
<th>Population Served</th>
<th>Minimum Number Monthly Samples</th>
</tr>
</thead>
<tbody>
<tr>
<td>25-2,600</td>
<td>2</td>
<td>60,001-70,000</td>
<td>70</td>
</tr>
<tr>
<td>2,601-3,200</td>
<td>3</td>
<td>70,001-83,000</td>
<td>60</td>
</tr>
<tr>
<td>3,201-4,700</td>
<td>4</td>
<td>83,001-96,000</td>
<td>50</td>
</tr>
<tr>
<td>4,701-6,000</td>
<td>6</td>
<td>96,001-120,000</td>
<td>40</td>
</tr>
<tr>
<td>6,001-7,600</td>
<td>7</td>
<td>120,001-220,000</td>
<td>40</td>
</tr>
<tr>
<td>7,601-8,500</td>
<td>8</td>
<td>220,001-350,000</td>
<td>40</td>
</tr>
<tr>
<td>8,601-12,500</td>
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<td>350,001-600,000</td>
<td>240</td>
</tr>
<tr>
<td>12,601-17,200</td>
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<td>600,001-780,000</td>
<td>240</td>
</tr>
<tr>
<td>17,200-21,000</td>
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<td>780,001-970,000</td>
<td>240</td>
</tr>
<tr>
<td>21,001-25,000</td>
<td>25</td>
<td>970,001-1,200,000</td>
<td>200</td>
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<tr>
<td>69,001 or more</td>
<td></td>
<td>5,360,001 or more</td>
<td>480</td>
</tr>
</tbody>
</table>

(3) Population served calculation. For purposes of determining the population served, the applicable method below shall be used:
(a) If the supplier of water serves an area defined by an official census block, the most recent official census block or official population projection shall be used, or
(b) If no official figures on population are available for the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, whichever is greater.

(4) Reporting system. A public water system shall cause samples to be tested, for the purpose of determining the presence or absence of coliforms, at least twice per month, or in accordance with a protocol agreed to pursuant to 401 KAR 8.160, Section 2(5). If coliforms are present, appropriate repeat samples shall be taken.

(5) Sampling schedule. Each public and semipublic water system shall take the following samples to determine the presence or absence of coliforms:
(a) No more than half of the samples shall be taken on one day.
(b) Two sets of the samples shall be submitted to the cabinet no later than ten (10) days after the end of the month for which the samples were taken. If the tenth day falls on a Saturday, Sunday or holiday the schedule shall be submitted on the following business day.
(c) Samples collected from one system shall not be contained in systems which serve a population of less than 600 people.
(d) Samples shall be collected from one system shall not be contained in systems which serve a population of less than 600 people.

(6) Forwarding samples. The cabinet shall, upon request, notify a water supplier as to those commercial or state laboratories certified in accordance with 401 KAR 8.430, to which samples may be sent for determining the presence or absence of coliforms. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

(7) Sample collection. Samples taken by or on behalf of public water systems shall be collected in bottles prepared and sterilized in accordance with "Standard Methods". When the sample is collected, the disinfectant residual shall be determined and recorded on the form provided by the laboratory with the sample container.

(8) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pippipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation. Repeat samples taken pursuant to subsection (4) of this section are not special purpose samples and shall be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation.

(9) Repeat monitoring.
(a) If a routine sample is total coliform positive, the public water system shall collect a set of repeat samples within twenty-four (24) hours of being notified of the positive result. The system shall collect at least three (3) repeat samples for each coliform-positive sample. The repeat samples shall be collected the twenty-four (24) hour limit on a case by case basis if the system demonstrates that it has a logistical problem in collecting the repeat samples within twenty-four (24) hours that is beyond its control. If an extension is granted, the cabinet shall specify how much time the system has to collect the repeat samples.
(b) The public water system shall collect at least one (1) repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one (1) repeat sample at a tap within five (5) service connections upstream and at least one (1) repeat sample at a tap within five (5) service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one (1) away from the end of the distribution system, the cabinet may waive the requirement to collect the repeat sample upstream or downstream of the original sampling site, but a total of three (3) repeat samples shall be collected.
(c) The public water system shall collect all repeat samples on the same day.
(d) If one (1) or more repeat samples in the set is total coliform-positive, the public water system shall collect an additional set of repeat samples in a manner similar to the collection of the (c) of this subsection. The public water system shall collect the additional sample within twenty-four (24) hours of being notified of the positive result, unless the cabinet extends the limit as provided in paragraph (a) of this subsection. The public water system shall repeat this process until either total coliforms are not detected in one (1) complete set of repeat samples or the system determines that the MCL for total coliforms set forth in Section 2 of this administrative regulation has been exceeded and notifies the cabinet, and the public, pursuant to 401 KAR 8.070. The cabinet may require further testing until all samples are total coliform-negative.
(e) If a system collecting fewer than five (5) routine samples per month has one (1) or more total coliform-positive samples and the cabinet does not invalidate the sample pursuant to subsection (3) of this section, the public water system shall conduct at least five (5) routine samples during the next month the system provides water to the public.
(f) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample from within five (5) service connections of the initial sample and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample as a repeat sample instead of a routine sample.
(g) Results of routine and repeat samples not invalidated by the cabinet shall be included in determining compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation.
(13) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection shall not count towards meeting the minimum-monitoring requirements of this section. The cabinet may invalidate a total coliform-positive sample only if the conditions of clause 1, 2, or 3 of this subparagraph are met:

1. Laboratory establishes to the satisfaction of the cabinet that improper sample analysis caused the total coliform-positive result.
2. The cabinet, on the basis of the results of repeat sampling collected as required by subsection (9) of this section, determines in writing that the total coliform-positive sample resulted from a distribution-system or other nondistribution-system plumbing problem. The cabinet shall invalidate a sample on the basis of repeat sampling results unless every repeat sample collected at the same tap as the original total coliform-positive sample is total coliform-negative and every repeat sample collected within five (5) service connections of the original tap is total coliform-negative. The cabinet shall not invalidate a total coliform-positive sample on the basis of repeat samples if every repeat sample is total coliform-negative, or if the public water system has only one (1) service connection.
3. The cabinet has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. A decision made by the cabinet to this effect shall be in writing and signed by the Director of the Division of Water Resources. The written decision shall be submitted to the U.S. Environmental Protection Agency and shall be available to the public. The written decision shall state the specific cause of the total coliform-positive sample and shall state what action the public water system has taken, or will take, to correct the problem. The public water system shall, regardless of the cabinet decision, conduct other testing to validate the repeat samples required under subsection (9) of this section. The cabinet shall not invalidate a total coliform-positive sample solely on the grounds that each repeat sample is total coliform-negative.

(b) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of interference, the public water system shall collect another sample from the location identified by the laboratory, within forty (42) hours of being notified of the interference problem, and reanalyzed for the presence of total coliforms. The system shall continue to resample within twenty-four (24) hours and have the sample analyzed until it obtains a valid result. The cabinet may waive the twenty-four (24) hour time limit on a case-by-case basis.

(14) Sanitary surveys.

(a) A public water system which does not collect five (5) or more routine samples per month shall undergo an initial sanitary survey by June 30, 1994, if it is a community public water system, and June 30, 1999, if it is a noncommunity water system. Thereafter, the system shall undergo a sanitary survey at least once every five (5) years except that a noncommunity water system, using only disinfected groundwater, not under the influence of surface water, shall undergo a sanitary survey at least once every ten (10) years. The cabinet shall review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(b) Information relating to a source of contamination within a dissolved wellhead-protection area, which is collected in the course of developing and implementing a U.S. Environmental Protection Agency-approved wellhead-protection program, may be considered in conducting a sanitary survey of a public water system using groundwater if the information was collected since the last time the public water system was subject to a sanitary survey.

(c) Sanitary surveys shall be performed by the cabinet or an agent approved by the cabinet. Public water systems are responsible for ensuring that required sanitary surveys take place.

(15) Fecal coliform—Escherichia coli (E. coli) testing.

(a) If a routine or repeat sample is total coliform-positive, the public water system shall analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the public water system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system shall notify the cabinet by the end of the day the test is notified of the test result pursuant to 401 KAR 8:070, Section 2(7)(c).

(b) The cabinet may allow a public water system to test for fecal coliform or E. coli testing on a total coliform-positive sample if the system determines that the total coliform-positive sample is fecal coliform-positive or E. coli-positive and notifies the cabinet as described in paragraph (a) of this subsection and the provisions of Section 2(5) of the administrative regulation apply.

(16) Analytical methodology. The analysis for the presence or absence of total coliforms shall commence within thirty (30) hours of the sample being collected, unless the cabinet waives this requirement in writing. Analysis for microbiological contaminants shall be conducted in accordance with 40 C.F.R. 141-214(f) in effect on July 1, 1986, hereby adopted without change.

(17) Response to violation.

(a) If a public water system exceeds the MCL for total coliforms set in Section 2 of this administrative regulation, it shall report the violation to the cabinet no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 401 KAR 8:070.

(b) If a public water system fails to comply with a coliform monitoring requirement, including the sanitary survey requirement, it shall report the monitoring violation to the cabinet within ten (10) days after the system discovers the violation, and notify the public in accordance with 401 KAR 8:070.

Section 2—Maximum Contaminant Levels (MCLs) for Microbiological Contaminants.

(1) The MCL is based on the presence or absence of total coliforms in a sample.

(a) If a public water system collects at least forty (40) samples per month, and no more than five (5) samples per tap, fifty percent (50) percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) If a public water system collects fewer than forty (40) samples per month, and no more than one (1) sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(c) If a fecal coliform-positive repeat sample or E. coli-positive repeat sample, or a total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 401 KAR 8:070, this violation may pose an acute risk to health.

(2) A public water system shall determine compliance with the maximum contaminant level for total coliforms forth in subsections (1) and (2) of this section for each month in which it is required to monitor for total coliforms.

(3) The following technologies are the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section:

(a) Protection of wells from contamination by colloids by appropriate placement and construction;

(b) Maintenance of a disinfectant residual throughout the distribution system;

(c) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(d) Filtration or disinfection of surface water, as described in 401 KAR 8:150, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; or

(e) The development and implementation of an EPA-approved...
State-Weehawken Protected-Program under 42 U.S.C.A. 300h-7, state programs to establish weehawken protection areas.

Section 3. Variances and Exemptions—Variances or exemptions from the minimum contaminant level—For total-coliform contaminated system in Section 2 of this administrative regulation shall not be permitted unless the public water system demonstrates to the cabinet's satisfaction that the violation of the total-coliform—maximum contaminant level is due to a persistent growth of total-coliforms in the distribution system rather than local or geographic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. In making the demonstration, the public water system shall meet all the requirements of 401-KAR 8:000, including submission of a compliance schedule acceptable to the cabinet. In addition, the public water system shall demonstrate to the cabinet's satisfaction that the following criteria have been met before the cabinet may consider a variance:

1. Over the past thirty (30) days, water entering the distribution system:
   a. Is free from fecal coliform or E. coli occurrence based on at least daily sampling;
   b. Contains less than one (1) total coliform per 100 milliliters of influent water in at least ninety five (95) percent of all samples based on at least daily sampling;
   c. Complies with the total-turbidity requirements of 401-KAR 8:1, Section 7a.1 and 7a.2;
   d. Contains a continuous disinfection residual consistent with 401-KAR 8:150, Section 11;
2. The public water system has had no waterborne disease outbreaks while being operated in its present configuration;
3. The public water system maintains biweekly contact with the cabinet and local health departments to assess lines possibly attributable to microbial occurrence in the public drinking water system;
4. The public water system has evaluated, on a monthly basis, at least the number of samples specified in Section 1(2) of this administrative regulation and has not had an E. coli positive compliance sample within the last six (6) months, unless the system demonstrates to the cabinet that the occurrence is not due to contamination entering the distribution system;
5. The public water system has undergone a sanitary survey conducted by a party approved by the cabinet within the past twelve (12) months;
6. The public water system has a cross-connection control program acceptable to the cabinet and performs an audit of the effectiveness of the program;
7. The public water system agrees to submit a biofilm control plan to the cabinet within twelve (12) months of the granting of the first request for a variance;
8. The public water system monitors general distribution system bacterial quality by conducting heterotrophic bacteria plate counts on at least a weekly basis at a minimum of one (1) percent of the number of total coliform sites specified for that system's size in Section 1(2) of this administrative regulation preferably using the PPA medium in Method #07A, #07B, or #07C, as set forth in the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, and its supplement, American Public Health Association, et al., and
9. The public water system conducts daily monitoring at distribution system sites approved by the cabinet and maintains a detectable disinfectant residual (measured as specified in 401 KAR 8:150, Section 3(1)) at a minimum of ninety five (95) percent of these points and a heterotrophic plate count of less than 600 coliforms per ml (measured as specified in 401-KAR 8:150, Section 3(1)) at sites without a disinfectant residual.

Section 4. Analysis for microbiological contamination and turbidity shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency or by the cabinet. The following document is hereby incorporated by reference and is available for public inspection and copying subject to copyright laws, between 8 a.m. and 4:30 p.m., Monday through Friday, except state holidays, at the Division of Water, 14 Reily Road, Frankfort Office Park, Frankfort, Kentucky 40601—Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and its supplement, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation. This publication is available, distributed, and may be obtained by contacting the Publication Office, American Public Health Association, 1015 16th Street NW, Washington, D.C. 20006.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 6:30 p.m. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 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 establishes monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.
(b) The necessity of this administrative regulation: This administrative regulation requires monitoring to assure microbiological purity of drinking water.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the Cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The assurance of microbiological purity of drinking water is essential to protect public health.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are a change in format and they will not change the requirements of the existing administrative regulation. This administrative regulation provides federal citations and strikes federal language adopted in the body of a state regulation.
(b) The necessity of the amendment to this administrative regulation: The cabinet believes that this will allow future federal changes in regulatory requirements to be more easily adopted.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendments to this administrative regulation are a change in format; they will not change the requirements of the existing administrative regulation. This administrative regulation provides federal citations and strikes federal language adopted in
the body of a state regulation.
(d) How the amendment will assist in the effective administration of the statutes: The cabinet believes that using federal citations with exceptions will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation applies to 491 public and 50 semipublic water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The amendments to this administrative regulation are a change in format; although two exceptions to the federal requirements are made, they will not change the requirements of the existing administrative regulation. The amendments to this administrative regulation adopt federal citations instead of federal language in the body of the state regulation.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation remain unchanged.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit by clarity seeing where the requirements of this administrative regulation are more stringent than the federal requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: The requirements of this administrative regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.
   (b) On a continuing basis: The requirements of this administrative regulation remain unchanged from the regulation currently in place. Costs of implementation will remain the same.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 will not be necessary.

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

(9) TIERING: Is tiering applied? Yes. This administrative regulation differs in requirements for community water systems, non-community water systems, and transient non-community water 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 administrative regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or are owned under county governments. Other districts may, in some cases, have a water system.

3. Does this administrative regulation require or authorize the action taken by the administrative regulation? KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300q-26), requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.21, 141.52, and 141.63 establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for the first year.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for local governments in subsequent years.

   (c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation are a change in format; although two exceptions to the federal requirements are made, they will not change the requirements of the existing administrative regulation or impose any additional cost for the first year.

5. How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation are a change in format; although two exceptions to the federal requirements are made, they will not change the requirements of the existing administrative regulation or impose 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: The amendments to this administrative regulation are to cite federal regulations rather than adopt federal language in the body of state regulations. Although two exceptions to the federal requirements are made, they will not change the requirements of the existing administrative regulation or impose any additional costs or requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The Safe Drinking Water Act (42 U.S.C. 300f through 300q-26), 40 C.F.R. 141.21, 141.52, and 141.63

2. State compliance standards. KRS 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300q-26) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.21, 141.52, and 141.63 establish monitoring requirements, analytical techniques, and maximum contaminant levels for microbiological contaminants.

5. 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 regulation does not impose stricter or additional requirements from the federal regulations. However, the existing regulation does contain a requirement that is different from the federal regulation, and that requirement is not changing. A minimum number of two microbiological tests per month are required of both public and semipublic water systems. Federal regulations do not cover semipublic systems, and require as few as one per quarter in small public systems. Two samples per month is a long standing requirement in Kentucky and the Division considers it a more protective public health standard.

6. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements KRS 24.10-110 requires the cabinet to regulate semipublic as well as public - 1550 -
water systems. The cabinet has required a minimum of two bacteriological samples per month in both semipublic and public water systems since before the passage of the federal Safe Drinking Water Act, and believes this requirement is both reasonable and more protective of public health than a single sample per quarter allowed for some small systems in the federal requirement.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels.

RELATES TO: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.11, 141.23, 141.24, 141.40, 141.41, 141.50, 141.51, 141.61.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) authorizes the [Environmental and Public Protection] Cabinet to enforce administrative regulations promulgated by the secretaries of the regulation and control of the purification of water for public and semipublic use, EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes sampling and analytical requirements for certain inorganic and organic chemicals and sets maximum contaminant levels for those chemicals which, if exceeded, may affect public health.

Section 1. A public water system shall monitor for inorganic chemicals in accordance with 40 C.F.R. 141.11, 141.23, 141.41, 141.51, and 141.62, effective July 1, 2007.

Section 2. A public water system shall monitor for organic chemicals in accordance with 40 C.F.R. 141.24, 141.50, and 141.51, effective July 1, 2007 (commuter-water system) and a nontransient noncommunity water system shall conduct monitoring to determine compliance with the maximum contaminant levels specified in Section 12 of the administrative regulation in accordance with the administrative regulation. A transient noncommunity water system shall conduct monitoring to determine compliance with the nitrate and nitrite maximum contaminant levels in Section 12 of the administrative regulation. Monitoring shall be conducted as follows:

(a) A ground water system shall take a minimum of one (1) sample at every entry point to the distribution system that is representative of each well after treatment, called a sampling point, beginning in the initial compliance period.

(b) The system shall take each sample at the same sampling point unless conditions pursuant to 40 C.F.R. 141.23(a)(1), March 25, 2003, make another sampling point more representative of each source or treatment plant.

(c) A surface water system, including a system using a combination of surface and groundwater, shall take a minimum of one (1) sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point that is representative of each source after treatment, called a sampling point, beginning in the initial compliance period.

(d) The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(e) If a system draws water from more than one (1) source and the sources are combined before distribution, the system may sample at an entry point to the distribution system during periods of normal operating conditions, i.e., if water is representative of all sources being used.

(f) The cabinet may reduce the total number of samples that shall be analyzed in accordance with conditions established in 40 C.F.R. 141.23(a)(4), March 25, 2003, by allowing the use of composite sampling.

(g) Composite samples from a maximum of five (5) sampling points are allowed, if the detection limit of the method used for analysis is less than one fifth (1/5) of the MCL.

(h) Composite sampling shall be done in the laboratory, if the concentration in the composite sample is greater than or equal to one fifth (1/5) of the MCL of any inorganic chemical, then a follow-up sample shall be taken within fourteen (14) days at each sampling point included in the composite.

(i) These samples shall be analyzed by the contaminants that exceeded one fifth (1/5) of the MCL in the composite sample.

(j) Sampling limits for each analytical method and MCL for each inorganic contaminant are as follows:

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>MCL (mg/L)</th>
<th>Methodology</th>
<th>Detection Limit (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.006</td>
<td>Absorption;</td>
<td>0.003</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ICP-Mass-Spectrometry</td>
<td>0.0006*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hydroxy-Atomy-Absorption</td>
<td>0.001</td>
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<tr>
<td>Arsenic</td>
<td>0.05, until January 22, 2006, or or after January 23, 2006</td>
<td>Absorption;</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Furnace Ash</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Platform-Stabilized Temperature</td>
<td>0.0005*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Atomy disproportion</td>
<td>0.004</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ICP-Mass-Spectrometry</td>
<td>0.0014*</td>
</tr>
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<td>Asbeteous</td>
<td>7, MFL</td>
<td>Transmission-Electron Microscopy</td>
<td>0.01-MFL</td>
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<td>Barium</td>
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<td>Absorption;</td>
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<td>Furnace-technique</td>
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<tr>
<td></td>
<td></td>
<td>Direct absorption</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Inductively Coupled Plasma</td>
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<td>Boryllium</td>
<td>0.004</td>
<td>Absorption;</td>
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<td>Furnace Ash</td>
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<td>Platform</td>
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<tr>
<td></td>
<td></td>
<td>Inductively Coupled Plasma</td>
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<tr>
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<td></td>
<td>ICP-Mass-Spectrometry</td>
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</tr>
<tr>
<td>Cadmium</td>
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<td>Absorption;</td>
<td>0.0001</td>
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<td>Absorption;</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
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</tbody>
</table>

(d) The frequency of monitoring for nitrate shall be in accordance with Section 5 of this administrative regulation.

Section 2. Asbestos: The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in Section 12 of this administrative regulation shall be as follows:

(1) Each community- and nontransient noncommunity water system shall monitor for asbestos during the first three (3)-year compliance period of each nine-(9)-year compliance cycle beginning in the initial compliance period.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos cement pipes, or both, it may apply to the cabinet for a waiver of the monitoring requirement in subsection (1) of this section. The cabinet shall grant the waiver pursuant to subsection 3(a) and (b) of this section.

(3) The cabinet may, in accordance with conditions established in 40 C.F.R. 141.23(b)(3), March 25, 2003, grant a waiver of the monitoring requirement in subsection (1) of this section based on a consideration of the following factors:

(a) Potential asbestos contamination of the water source, and

(b) The use of asbestos cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver shall remain in effect until the completion of the third (3) year-compliance period.

(b) A new waiver shall be requested and received for each compliance period.

(c) A system not receiving a waiver shall monitor in accordance with the provisions of subsection 1 of this section.

(d) A system vulnerable to asbestos contamination due solely to corrosion of asbestos cement pipe shall take one (1) sample at a tap served by asbestos cement pipe and under conditions where asbestos contamination is most likely to occur.

(e) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provisions of Section 1 of this administrative regulation.

(f) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos cement pipe shall take one (1) sample at a tap served by asbestos cement pipe and under conditions where asbestos contamination is most likely to occur.

(g) A system that exceeds the maximum contaminant levels specified in Section 12 of this administrative regulation, as determined in Section 9 of this administrative regulation, shall monitor quarterly beginning in the second quarter after the violation occurred.

(h) The cabinet may, in accordance with the system's request, grant the quarterly-monitoring requirement in subsection (1) of this section.

(i) The cabinet shall make a determination of the quarterly-monitoring requirement for the frequency specified in subsection (1) of this section.

Section 3. Inorganic Contaminants other than Asbestos, Nitrate, and Nitrite: The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in Section 12 of this administrative regulation for aluminum, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be as follows:

(1) Groundwater systems shall take one (1) sample at each sampling point every three (3)-year period.

(2) Surface water systems, or combined surface and ground water systems, shall take one (1) sample annually at each sampling point.

(a) Groundwater systems shall take one (1) sample at each sampling point during each compliance period.

2. A surface water system, or combined surface and ground water system, shall take one (1) sample annually at each sampling point.
shall-be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level.

(b) The cabinet may allow a groundwater system to reduce the sampling frequency to annually if four (4) consecutive quarterly samples are reliably and consistently less than the maximum contaminant level in accordance with conditions established in 40 C.F.R. (c)(2), March 25, 2003.

(c)(1) For a community or nontransient noncommunity water system, the cabinet shall allow a surface water system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty (50) percent of the maximum contaminant level.

(c)(2) A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty (50) percent of the maximum contaminant level (MCL).

(d) Each transient noncommunity water system shall monitor annually.

(e) If the initial round of quarterly sampling is completed, each community and nontransient noncommunity system that monitors annually shall take subsequent samples during the quarters that previously resulted in the highest analytical result.

Section 5. Nitrate. A public water system (community, nontransient, noncommunity, or transient noncommunity system) shall monitor to determine compliance with the maximum contaminant level for nitrate in Section 12 of this administrative regulation.

(a) A public water system shall collect one (1) sample at each sampling point in the compliance period.

(b) After the initial sample, a system with an analytical result for nitrate of over fifty (50) percent of the MCL shall monitor the frequency specified in subsection (c) of this section.

(2)(a) For a community, nontransient noncommunity, or transient noncommunity water system, the repeat monitoring frequency for a water system shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level.

(2)(b) A surface water system served by a groundwater system shall monitor quarterly.

(2)(2) For a community or nontransient noncommunity water system, the repeat monitoring frequency for groundwater systems served by a surface water source shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level.

(2)(c) The cabinet may allow a groundwater system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty (50) percent of the maximum contaminant level in accordance with conditions established in 40 C.F.R. (c)(2), March 25, 2003.

(c) A community or nontransient noncommunity water system served by a surface water source shall monitor quarterly.

(d) A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty (50) percent of the maximum contaminant level (MCL).

(e) Each transient noncommunity water system shall monitor annually.

(f) If the initial round of quarterly sampling is completed, each community and nontransient noncommunity system that monitors annually shall take subsequent samples during the quarters that previously resulted in the highest analytical result.

Section 6. Certification Sampling. If the results of sampling for arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium indicate an exceedance of the maximum contaminant level, the cabinet may, in accordance with conditions established in 40 C.F.R. (c)(2), March 25, 2003, require that one (1) additional sample be collected within two (2) weeks after the initial sample was taken at the same sampling point.

(g) A public water system unable to comply with the twenty-four (24) hour notification requirement shall immediately notify the owners served by the area served by the public water system in accordance with the requirements for a Tier 1 notice in 401.KAR 8-070.

(h) A system exercising this option shall keep and analyze a composite sample within two (2) weeks of notification of the analytical results of the first sample.

(i) A confirmation sample is taken for any contaminant, and then the results of the initial and confirmation sample shall be averaged.

(j) The resulting average shall be used to determine the sys-
Section 8. Public-water systems may apply to the cabinet to conduct more-frequent monitoring than the minimum monitoring frequencies specified in this regulatory section.

Section 9. Compliance Determination. Compliance with Section 12 of this administrative regulation shall be determined based on the analytical result obtained at each sampling point.

(1) For a system that is conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium shall be determined by a running annual average at any sampling point.

(b) If the average at any sampling point is greater than the maximum contaminant level, the system shall be out of compliance.

(2) If any one (1) sample exceeds the annual average level to be exceeded, then the system shall be out of compliance immediately.

(c) Any sample below the method detection limit shall be calculated to zero for the purpose of determining the annual average.

(d) If a system fails to collect the required number of samples, compliance or the average concentration shall be based on the total number of samples collected.

Section 10. Each public water system shall monitor for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium if the level of a contaminant at any sampling point is greater than the maximum contaminant level.

(b) If a confirmation sample is required, the determination of compliance shall be based on the average of the two (2) samples.

(c) If a system fails to collect the required number of samples, compliance or the average concentration shall be based on the total number of samples collected.

(2) For systems that are monitoring annually or less frequently, the system shall be out of compliance if the maximum contaminant levels for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, or thallium if the level of a contaminant at any sampling point is greater than the maximum contaminant level.

(b) If a confirmation sample is required, the determination of compliance shall be based on the average of the two (2) samples.

Section 11. Analytical Methods. Analytical methods for inorganic compounds are as follows:

1. Antimony
2. Arsenic
3. Barium
4. Beryllium
5. Cadmium
6. Chromium
7. Cyanide
8. Mercury
9. Nickel
10. Nitrate
11. Nitrite
12. Selenium
13. Thallium

Section 12. Maximum Contaminant Levels. (1) The maximum contaminant levels for inorganic contaminants specified in subsection (1)(b) to (f) and (i) to (p) of the section shall apply to community water systems and nontransient noncommunity water systems.
Section 14. Affordable Technology. The following table identifies the affordable technology, treatment techniques, or other means available to systems serving ten thousand (10,000) or fewer persons for achieving compliance with the maximum contaminant level for arsenic in Section 12 of this administrative regulation.

<table>
<thead>
<tr>
<th>Small System Compliance Technologies for Arsenic</th>
<th>141.23(k), January 25, 2003.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small system compliance technologies:</td>
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<tr>
<td>Affordable for listed small system categories*</td>
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<tr>
<td>Activated alumina, centralized</td>
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<tr>
<td>Activated Alumina, point-of-use*</td>
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<tr>
<td>Coagulation, filtration</td>
<td>601 – 3,300 – 3,301 – 10,000</td>
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<tr>
<td>Coagulation-assisted Membrane Filtration</td>
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<tr>
<td>Enhanced coagulation, filtration</td>
<td>All size categories</td>
</tr>
<tr>
<td>Enhanced lime softening, pH 10-6</td>
<td>All size categories</td>
</tr>
<tr>
<td>Ion Exchange</td>
<td></td>
</tr>
<tr>
<td>Enhanced reverse osmose, point-of-use*</td>
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</tbody>
</table>

*Small-system compliance technologies shall be affordable and technically feasible for small systems.
**Small-system compliance technologies for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V.

Three (3) categories of small systems—those serving more than twenty-five (25) but fewer than 601; those serving more than 500, but fewer than 2,000; and those serving more than 2,000 but fewer than 10,000.

If point-of-use or point-of-entry devices are used for compliance, the programs to ensure proper long-term operation, maintenance, and monitoring shall be provided by the system to ensure adequate performance.

Technology reject a large volume of water. May not be applicable for areas where water quantity may be an issue.

To obtain high removals, iron to arsenic ratio shall be at least 20:1.

Section 15. Special Monitoring for Sodium. (1) Those required to sample. Suppliers of water for community public water systems shall collect and analyze one (1) sample per plant at the entry point of the distribution system for the determination of sodium concentration levels.

(2) Sampling frequency.

(a) Community water systems, surface water sources. A system that uses surface water sources in whole or in part shall collect and analyze samples biannually.

(b) Community water systems, groundwater sources. A system that uses only groundwater sources shall collect and analyze samples annually.

(c) Samples required.

1. The minimum number of samples required to be taken by the system shall be based upon the number of treatment plants used by the system, except the cabinet shall consider multiple wells-drawing raw water from a single aquifer to be one (1) treatment plant for the purpose of determining the minimum number of samples.

2. The supplier of water may be required to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(d) Analyses for sodium shall be in accordance with methods approved for drinking water by the U.S. EPA in 40 C.F.R.
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Section 17. Nitrate Exemption. (1) A noncommunity water system may exceed the maximum contaminant level for nitrate, but shall not exceed twenty (20) mg/L, if the system demonstrates to the cabinet, in accordance with 40 C.F.R. 141.11(d), January 22, 2001, that the conditions of subsection (2)(a) to (d) of this section shall be met:

(2) A monitoring value above twenty (20) mg/L, or if a condition of this section is not met for monitoring values above ten (10) mg/L, shall be considered a violation. 

(e) The system shall not be available to children under six (6) months of age.

(a) The noncommunity water system shall notify the public according to the requirements for a Tier 1 notification in 401 KAR 8.070, including continuous posting.

(b) The water system shall notify local and state health officials of the exceedance, and

(c) Adverse health effects shall not result.

HENRY LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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. 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 31, 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: Abigal Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Sandy Gruzesky, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes analytical techniques, monitoring requirements and maximum contaminant levels for inorganic and organic chemicals. This regulation also identifies treatment technologies to reduce chemical contamination if necessary.
(b) The necessity of this administrative regulation: This administrative regulation allows the cabinet to assure the chemical purity of drinking water.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Monitoring for chemical purity of drinking water is essential to protect public health.

(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 provides federal citations and strikes federal language adopted in the body of three state regulations.

401 KAR 8.250, 8.400, and 8.420 are being combined into this regulation. The substance of the existing administrative regulations remains unchanged.

(b) The necessity of the amendment to this administrative regulation: The cabinet believes that the amendment will allow future federal changes in regulatory requirements to be more easily adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides federal citations and strikes federal language adopted in the body of a state regulation. These citations will make the administrative regulation conform exactly to federal requirements for organic and inorganic chemical monitoring.

(d) How the amendment will assist in the effective administration of the statutes: The cabinet believes that this amendment will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local government entities affected by this administrative regulation: This regulation applies to 491 public water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this administrative regulation provide federal citations instead of federal language in the body of the state regulation. The substantive requirements of the regulated entities are unchanged in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this regulation remain unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit by clearly seeing the requirements of this administrative regulation are no more stringent than the federal requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The requirements of this administrative regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.

(b) On a continuing basis: The requirements of this administrative regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 will not be necessary.

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

(9) TIERING: Is tiering applied? Yes. This regulation differs in requirements for community water systems, noncommunity water systems, and transient noncommunity water 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 administrative regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or organized
under county governments. Other districts may, in some cases, have a water system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Safe Drinking Water Act (42 U.S.C. 300j through 300j-26), 40 C.F.R. 141.11, 141.23, 141.41, 141.51, 141.62, 141.24, 141.50, and 141.61 establish requirements for analytical techniques, monitoring requirements, and maximum contaminant levels for organic and inorganic chemicals. KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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? This administrative regulation will not generate any revenue for local governments for the first year.

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

(c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation are a change in format; they will not impose any additional cost for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation are a change in format; they will not impose any additional cost for subsequent years.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300j through 300j-26), 40 C.F.R. 141.11, 141.23, 141.41, 141.51, 141.62, 141.24, 141.50, and 141.61.


3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141.11, 141.23, 141.41, 141.51, 141.62, 141.24, 141.50, and 141.61 establish analytical techniques, monitoring requirements and maximum contaminant levels for organic and inorganic chemicals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection
Division of Water

(Amendment)

401 KAR 8:300. Lead and copper.

RELATES TO: [KRS] 40 C.F.R. [141.23(4)] 141.43, 141.80-141.91, 141.154, 42 U.S.C. 300j through 300j-26, 42 U.S.C. 300g, 2008-531(300g-6(e), 2009, 2010]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. [141.23(4)] 141.43, 141.80-141.91, 42 U.S.C. 300j through 300j-26, 40 C.F.R. 141.23(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use, as defined in 401 KAR 8:010. The prohibition shall not apply to leaded joints necessary for the repair of cast iron pipes.

Section 1. A public water system shall meet the requirements of this administrative regulation for the control of lead and copper as established in:

(a) 40 C.F.R. 141.42, 141.43, 141.82, and 141.91, effective July 1, 2007.

(b) 40 C.F.R. 141.60, 141.81, 141.83 through 141.90, and 141.152, effective December 10, 2007. (Prohibition of Use of Lead Pipes, Siklon, and Flux. Pipe, sight, or flux used in the installation or repair of a public water system, or plumbing in a residential or nonresidential facility providing water for human consumption that is connected to a public water system, shall be lead free, as defined in 401 KAR 8:010. The prohibition shall not apply to leaded joints necessary for the repair of cast iron pipes.

Section 2. General Requirements. (1) The requirements of this administrative regulation shall constitute the primary drinking water regulations for lead and copper. Each provision of this administrative regulation shall apply to community water systems and nontransient, noncommunity water systems, referred to as "water systems" or "systems".

(2) The requirements in this administrative regulation shall take effect upon adoption.

(3) This administrative regulation establishes a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered by lead and copper action levels measured in samples collected at consumer taps.

(4) Lead and copper action levels:

(a) The lead action level shall be exceeded if the concentration of lead in more than ten (10) percent of total water samples collected during any monitoring period conducted in accordance with Section 3 of this administrative regulation is greater than or equal to 0.015 mg/l, i.e., if the 90th percentile lead level is greater than or equal to 0.015 mg/l.

(b) The copper action level shall be exceeded if the concentration of copper in more than ten (10) percent of total water samples collected during any monitoring period conducted in accordance with Section 3 of this administrative regulation is greater than or equal to 1.0 mg/l, i.e., if the 90th percentile copper level is greater than or equal to 1.0 mg/l.

(c) The 90th percentile lead and copper levels shall be computed as follows:

1. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number corresponding to a number from 1 to the total number of samples taken.

2. The number of samples taken during the monitoring period shall be multiplied by zero and five-tenths (0.5).

3. The contaminant concentration in the number of samples divided by the calculation in paragraph 2 shall be the 90th percentile contaminant level.

4. For a water system serving fewer than 100 people that collects five (5) samples per monitoring period, the 90th percentile shall be computed by taking the average of the highest and second highest concentrations.

(b) Corrosion control treatment requirements:

(a) A water system shall install and operate optimal corrosion control treatment as defined in 401 KAR 8:010.

(b) A water system that complies with the applicable corrosion control treatment requirements approved by the cabinet under Sections 3 and 4 of this administrative regulation shall be deemed
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in-compliance with the treatment requirement contained in paragraph (a) of this subsection.

(6) Source water treatment requirements. A system exceeding the lead- or copper action level shall implement all applicable source water treatment requirements specified by the cabinet under Section 8 of this administrative regulation.

(7) Lead service line replacement requirements. A system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in Section 8 of this administrative regulation.

(8) Public education requirements. A system exceeding the lead action level shall implement the public education requirements contained in Section 7 of this administrative regulation.

(9) Monitoring and analytical requirements. Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results under this administrative regulation shall be completed in compliance with Sections 8 to 11 of this administrative regulation.

(10) Reporting requirements. A system shall report to the cabinet any information required by the treatment variance and Section 12 of this administrative regulation.

(11) Recordkeeping requirements. A system shall maintain records in accordance with Section 13 of this administrative regulation.

(12) Violation of national primary drinking water regulations. Failure to comply with the applicable requirements of this section and Sections 3 to 13 of this administrative regulation shall constitute a violation of the national primary drinking water regulations for lead and copper. The system shall notify the public pursuant to 401 KAR 8-070 and shall issue the notice required by this administrative regulation.

Section 3. Corrosion Control Treatment Applicability. The following corrosion control treatment steps shall apply to small, medium, and large water systems:

(a) A system shall complete applicable corrosion control treatment requirements described in Section 4 of this administrative regulation, by the deadline established in this section.

(b) A system serves more than 50,000 persons, shall complete the corrosion control treatment steps specified in subsection (4) of this section, unless it is deemed to have optimized corrosion control under subsection (2)(b) or (c) of this section.

(c) A system serving less than or equal to 3,000 persons, and a medium-size system, serving more than 3,000 and less than or equal to 50,000 persons, shall complete the corrosion control treatment steps specified in subsection (2) of this section, unless it is deemed to have optimized corrosion control under subsection (3)(a), (b), or (c) of this section.

(d) A system shall be deemed to have optimized corrosion control and may complete the applicable corrosion control treatment steps identified in this section if the system satisfies one (1) of the criteria specified in paragraphs (a) through (e) of this subsection, and that system is deemed to have optimized corrosion control under this subsection, and that system has been in place, shall continue to operate and maintain optimal corrosion control treatment.

(e) A small or medium-size system shall be deemed to have optimized corrosion control if the system meets the lead and copper action level during each of two (2) consecutive six (6) month monitoring periods conducted in accordance with Section 8 of this administrative regulation.

(f) A system shall be deemed to have optimized corrosion control if the system demonstrates to the satisfaction of the cabinet that it has conducted activities equivalent to the corrosion control steps specified in the administrative regulation.

(g) A system shall be deemed to have optimized corrosion control if the system has no action levels in lead or copper.

(h) A system shall be deemed to have optimized corrosion control if the system has no corrosion control steps.

(i) A system shall be deemed to have optimized corrosion control if the system has no corrosion control requirement.

2. If the cabinet makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with Section 4 of this administrative regulation.

3. A system deemed to have optimized corrosion control under this paragraph shall:

a. Operate in compliance with the cabinet-designated optimal water quality control parameters in accordance with Section 4(7) of the administrative regulation; and

b. Continuously conduct lead and copper tap and water quality parameter sampling in accordance with Sections 6(4)(c) and 6(4) of this administrative regulation, respectively.

4. A system shall provide the cabinet with the following information to support a determination under this paragraph:

a. The results of all test samples collected for each of the water quality parameters in Section 4(3) of the administrative regulation;

b. A report explaining the test methods used by the water system to evaluate the corrosion control treatment as specified in Section 4(3)(a) of this administrative regulation, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

c. A report explaining how corrosion control has been installed and how it is being maintained to ensure minimal lead and copper concentrations at consumers' taps; and

d. The results of tap water sample collection in accordance with Section 8 of this administrative regulation at least once every six (6) months for one (1) year after corrosion control has been installed.

(e) A water system shall be deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with Section 8 of this administrative regulation and satisfies the monitoring requirements specified in subsection (2)(b) of this section.

(f) A system exceeding the lead action level shall implement the public education requirements contained in Section 7 of this administrative regulation and the highest source water lead concentration is less than the practical quantitation level for lead specified in Section 11 of the administrative regulation and 40 C.F.R. 401.4(b).

1. A system whose highest source water lead level is below the method detection limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the practical quantitation level for lead specified in Section 11 of this administrative regulation and 40 C.F.R. 401.4(b).

2. A system deemed to have optimized corrosion control in accordance with this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three (3) calendar years using the reduced number of sites specified in Section 8(3) of this administrative regulation and collecting the samples at times and locations specified in Section 8(4)(d) of this administrative regulation.

3. A system deemed to have optimized corrosion control pursuant to this paragraph shall notify the cabinet in writing pursuant to Section 12(1)(c) of this administrative regulation of any change in treatment or the addition of a new source. The cabinet may require the system to conduct additional monitoring or, upon agreement between the cabinet and the water system, take action to ensure that the system maintains minimal levels of corrosion in the distribution system.

4. If a system exceeds the copper action level, the system shall not be deemed to have optimized corrosion control under this paragraph, and shall implement corrosion control treatment pursuant to subsection 5 of this paragraph.

5. A system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in subsection (5) of this section. A large system triggered into corrosion control shall adhere to the schedule specified in subsection (6) of this section for medium-size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control under this paragraph.

(2)(c) Any small or medium-size water system that shall complete the corrosion control steps due to its exceedance of the lead or copper action level may choose completing the treatment steps if the system meets both action levels during each of two (2) consecutive monitoring periods conducted pursuant to Section 8 of this administrative regulation and submits the results to the cabinet.
(b) If the water system then exceeds the lead or copper action level during any monitoring period, the system shall commence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety.

(c) The cabinet may require a system to repeat treatment steps previously completed by the system if the cabinet determines it necessary to implement properly the treatment requirements of this section. The cabinet shall notify the system in writing of the determination and explain the basis for its decision.

(d) The requirement for a small or medium-size system, including a system deemed to have optimized corrosion control under subsection (2)(a) of this section, to implement corrosion control treatment steps in accordance with subsection (5) of this section shall be triggered if a small or medium-size system exceeds the lead or copper action level.

(4) Treatment steps and deadlines for large systems. Except as provided in subsection (5)(b) and (c) of this section, a large system shall complete the following corrosion control treatment steps, described in the referenced portions of Sections 4, 8, and 9 of this administrative regulation, in the indicated time frames.

(a) Step 1—The system shall conduct the initial monitoring required by Sections 8(4)(a) and 9(2) of this administrative regulation during two (2) consecutive six (6) month monitoring periods within the first year of operation or the first year after a change-in-circumstance as specified in subsection (2)(a) of this section. If the system was in operation as of January 1, 1992, the initial monitoring shall have been conducted by January 1, 1992.

(b) Step 2—The system shall complete the corrosion control studies required by Section 4(2) of this administrative regulation within eighteen (18) months after completing Step 1 in paragraph (a) of this subsection.

(c) Step 3—The cabinet shall approve or designate an optimal corrosion control treatment pursuant to Section 4(4) of this administrative regulation within six (6) months after completing Step 2 in paragraph (b) of this subsection.

(d) Step 4—The system shall install the optimal corrosion control treatment required by Section 4(6) of this administrative regulation within twenty-four (24) months after completing Step 3 in paragraph (c) of this subsection.

(e) Step 5—The system shall complete the follow-up sampling required by Sections 8(4)(b) and 9(2) of this administrative regulation within thirty-six (36) months after the cabinet approves or designates an optimal corrosion control treatment.

(f) Step 6—The system shall complete the system's installation of treatment and approve or designate optimal water quality control parameters pursuant to Section 4(5) of this administrative regulation within six (6) months after completion of step 5 in paragraph (f) of this subsection.

(g) Step 7—The system shall operate in compliance with the optimal water quality control parameters approved or designated by the cabinet pursuant to Section 4(7) of this administrative regulation and shall continue to conduct the tap sampling required by Sections 8(4)(b) and 9(2) of this administrative regulation within one (1) year after completing Step 4 in paragraph (d) of this subsection.

(h) Step 8—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(i) Step 9—The system shall conduct the regular system condition evaluations pursuant to Section 4(9) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(j) Step 10—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(k) Step 11—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(l) Step 12—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(m) Step 13—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(n) Step 14—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(o) Step 15—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(p) Step 16—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(q) Step 17—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(r) Step 18—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(s) Step 19—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(t) Step 20—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(u) Step 21—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(v) Step 22—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(w) Step 23—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(x) Step 24—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(y) Step 25—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(z) Step 26—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(A) Step 27—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(B) Step 28—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(C) Step 29—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(D) Step 30—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(E) Step 31—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(F) Step 32—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(G) Step 33—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(H) Step 34—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(I) Step 35—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(J) Step 36—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(K) Step 37—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(L) Step 38—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(M) Step 39—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.

(N) Step 40—The system shall conduct the final tap-sampling required by Sections 8(4)(b) and 9(4) of this administrative regulation, on an ongoing basis, to ensure the system continues to comply with the optimal water quality control parameters.
after evaluating the corrosion control treatments listed above:

1. Lead;
2. Copper;
3. pH;
4. Alkalinity;
5. Calcium;
6. Conductivity;
7. Orthophosphate, if an inhibitor containing a phosphate compound is used;
8. Silicate, if an inhibitor containing a silicate compound is used; and

(b) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document the constraints with at least one (1) of the following:

1. Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; or
2. Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(c) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(d) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the cabinet in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (a) through (c) of this subsection.

(2) Cabinet designation or approval of a designated optimal corrosion control treatment.

(a) Based upon consideration of available information including, if applicable, studies performed under subsection (3) of this section and a system's recommended treatment alternative, the cabinet shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment from among those listed in subsection (3)(a) of this section. If approving or designating optimal treatment, the cabinet shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(b) The cabinet shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the cabinet requests additional relevant information to aid its review, the water system shall provide the information.

(3) Installation of optimal corrosion control. Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment approved by the cabinet under subsection (4) of this section.

(4) Cabinet review of treatment and specification of optimal water quality control parameters. The cabinet shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine if the system has properly installed and operated the optimal corrosion control treatment approved by the cabinet in subsection (4) of this section.

(a) Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the cabinet shall approve:

1. A minimum value of or a range of values for pH measured at each entry point to the distribution system;
2. A minimum pH value, measured in all tap samples. The value shall be equal to or greater than seven and zero tenths (7.0), unless the cabinet determines that meeting a pH level of seven and zero tenths (7.0) is not technologically feasible or is not necessary for the system to optimize corrosion control;
3. If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the cabinet determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;
4. If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples; and
5. If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(b) The values for the applicable water quality control parameters listed above shall be those that the cabinet, in agreement with the water system, determines reflect optimal corrosion control treatment for the system. The cabinet may, in agreement with the water system, designate values for additional water quality control parameters determined to reflect optimal corrosion control for the system. The cabinet shall notify the system in writing of these determinations and explain the basis for its decision.

(5) Continued operation and monitoring.

(a) A system optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including monitoring water quality parameters at or above minimum values or within ranges designated by the cabinet under subsection (6) of this section, in accordance with the subsection for all samples collected under Section 6(4) and (6) of this administrative regulation.

(b) Compliance with the requirements of this subsection shall be determined every six (6) months, as specified in Section 6(4) of this administrative regulation.

(c) A water system shall be out of compliance with the requirements of this subsection for a six (6) month period if it has exceeded for a cabinet-specified parameter in subsection (5) of the section on more than nine (9) days during the period.

(d) An excursion shall be for a failure of the daily value for one (1) or more of the water quality parameters measured at a sampling location below the minimum value or outside the range designated by the cabinet.

(e) Daily values shall be calculated as follows, except that the cabinet may delete results of obvious sampling errors from this calculation.

1. On days when more than one (1) measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day, regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both. If the U.S. Environmental Protection Agency has approved an alternative formula, that formula shall be used to aggregate multiple measurements taken at a sampling point to a single water quality parameter instead of the formula in this paragraph.

2. On days when only one (1) measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

3. On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

(f) Modification of cabinet's treatment decisions.

(a) Upon its own initiative, or in response to a request by a water system or other interested parties, the cabinet may modify its determination of the optimal corrosion control treatment under subsection (4) of this section or optimal water quality-control parameters under subsection (6) of this section.

2. A request for modification by a system or other interested party shall:

a. Be in writing;

b. Explain why the modification is appropriate; and

c. Provide supporting documentation.

(b) The cabinet may modify its determination if it concludes that change is necessary to ensure that the system continues to optimize corrosion control treatment.

2. A revised determination shall:

a. Be made in writing;

b. Set forth the new treatment requirements; and

c. Explain the basis for the cabinet's decision.
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Section 5. Source Water Treatment Requirements. (1) Deadlines for completing source water treatment steps—The cabinet shall, with the approval of the cabinet, complete the applicable source water monitoring and treatment requirements described in the referenced portions of subsection (2) of this section and Sections 8 and 10 of this administrative regulation, by the following deadlines:
(a) Step 1—A system exceeding the lead or copper action level shall completely install lead- and copper source water monitoring required by Section 10(2) of this administrative regulation and make a treatment recommendation to the cabinet pursuant to subsection (2)(c) of this section within six (6) months after exceeding the lead or copper action level.
(b) Step 2—The cabinet shall make a determination regarding source water treatment—As provided by subsection (2)(b) of this section within six (6) months after submission of monitoring results under paragraph (a) of this subsection.
(c) Step 3—If the cabinet determines installation of source water treatment, the system shall install the treatment required by subsection (2)(c) of this section within twenty-four (24) months after completion of paragraph (b) of this subsection.
(d) Step 4—The system shall complete the follow-up tap water monitoring required by Section 8(4)(b) of this administrative regulation and the source water monitoring required by Section 10(2) of this administrative regulation within twenty-four (24) months after completion of paragraph (b) of this subsection.
(e) Step 5—The cabinet shall review the system’s installation and operation of source water treatment and specify maximum permissible source water levels pursuant to subsection (2)(d) of this section within six (6) months after completion of paragraph (b) of this subsection.
(f) Step 6—The system shall operate in compliance with the maximum permissible lead and copper source water levels designated by the cabinet pursuant to subsection (2)(c) of this section and shall continue the source water monitoring required by Section 10(4) of this administrative regulation.
(2) Description of source water treatment requirements.
(a) A system that exceeds the lead or copper action level shall recommend in writing to the cabinet the installation and operation of one (1) of the source water treatment listed in paragraph (b) of this subsection. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users’ taps.
(b) The cabinet shall evaluate the results of all source water samples submitted by the water system to determine if source water treatment is necessary to minimize lead and copper levels at users’ taps. If the cabinet determines that treatment is needed, the cabinet shall either require installation and operation of the source water treatment recommended by the system or require the installation and operation of another source water treatment from among the following: ion-exchange, reverse osmosis, lime-stabilization, or coagulation and filtration. If the cabinet requests additional relevant information to aid in its review, the water system shall provide the information by the date specified by the cabinet in its request. The cabinet shall notify the system in writing of its determination and set forth the basis for its decision.
(c) Each system shall properly install and operate the source water treatment designated by the cabinet under paragraph (b) of this subsection.
(d) The cabinet shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine if the system has properly installed and operated the source water treatment designated by the cabinet. Based upon its review, the cabinet shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. The maximum permissible lead and copper concentrations shall reflect the contaminant removal capability of the treatment, assuming the treatment is properly operated and maintained. The cabinet shall notify the system in writing and explain the basis for its decision.
(e) Each system shall maintain lead- and copper levels below the maximum permissible concentrations designated by the cabinet at each sampling point monitored in accordance with Section 10 of this administrative regulation. The system shall be in violation of this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the cabinet.
(3) Upon its own initiative or in response to a request by a water system or other interested party, the cabinet may modify its determination of the source water treatment under paragraph (b) of this subsection, or maximum permissible lead- and copper-concentrations for finished water entering the distribution system under paragraph (d) of this subsection.
(4) A request for modification by a system or other interested party shall:
(a) Be in writing;
(b) Explain why the modification is appropriate; and
(c) Provide supporting documentation.
(5) The cabinet may modify its determination if it concludes that a change is necessary to ensure that the system continues to minimize lead- and copper-concentrations in source water.
(6) A revised determination shall:
(a) Be in writing;
(b) Set forth the new treatment requirements;
(c) Explain the basis for the cabinet’s decision; and
(d) Provide an implementation schedule for completing the treatment modifications.

Section 6. Lead Service Line Replacement Requirements. (1) A system that fails to meet the lead-action level in tap samples taken pursuant to Section 8(4)(b) of this administrative regulation, after installing corrosion control or source water treatment, whenever sampling is later, shall replace lead-service lines in accordance with the requirements of this section. If a system is in violation of Section 3 or 6 of this administrative regulation for failure to install source water or corrosion control treatment, the cabinet may require the system to commence lead-service line replacement under the section after the date by which the system was required to conduct monitoring under Section 8(4)(b) of this administrative regulation has passed.
(2) A water system shall replace annually at least fourteen (14) percent of the initial number of lead service lines in its distribution system, including an identification of the portion owned by the system, based on a materials evaluation, including the evaluation required under Section 8(4) of this administrative regulation, and any relevant local or state law or ordinance. The first year’s lead service line replacement shall begin on the date the system is in violation of Section 3 of this regulation.
(3) A system may replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to Section 8(2)(c) of this administrative regulation, is less than or equal to 0.015 mg/l.
(4) A water system shall replace that portion of the lead service line that it owns. If the system does not own the entire lead service line, the cabinet shall notify the owner of the line or the owner’s authorized agent that the system shall replace the portion of the service line that it owns. The cabinet shall also offer to replace the owner’s portion of the line and shall replace the owner’s portion if the owner pays for replacement. A system may bear the cost of replacing the privately owned portion of the line, or if replacing the privately owned portion would be prohibited by state, local, or common law. A water system that does not replace the entire lead service line shall complete the line’s replacement at its earliest convenience.
(5) At least forty-five (45) days before beginning with the partial replacement of a lead service line, the water system shall provide notice to the residents of the buildings served by the line, explaining that they may experience a temporary increase in lead levels if their drinking water, along with guidance on measures consumers may take to minimize their exposure to lead.
not allow the water system to provide notice under the previous sentence less than forty-five (45) days before beginning partial lead service line replacement, if the replacement is in conjunction with emergency repairs.

2. The water system shall also inform the residents served by the line that the system shall—(a) sample a representative number of lead service lines that are representative of the water in the service line for analysis of lead content, as prescribed under Section 8(2)(c) of this administrative regulation, within twenty-two (22) hours after the completion of the partial replacement of the service line.

3. The system shall collect the sample and report the results of the analysis to the owner of the line. The results shall be mailed to the owner of the line within three (3) business days of receiving the results. Mailed notices must be posted within three (3) business days of receiving the results. The results shall be considered to meet this requirement.

(b) The water system shall provide the information required by paragraph (a) of this subsection to the residents of individual dwellings by mail or by other methods approved by the cabinet, if multi-family dwellings are served by the line, the water system may instead post the information at a conspicuous location.

5. A system shall replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, if a shorter replacement schedule is feasible. The cabinet shall make the feasibility determination and set the replacement schedule in writing and notify the system of the start date. The system shall replace all lines within six (6) months after the system is triggered into lead service line replacement based on monitoring referenced in subsection (1) of this section.

6. A system may cease replacing lead service lines if first draw samples collected pursuant to Section 8(2)(b) of this administrative regulation meet the lead action level during each of two (2) consecutive monitoring periods and the system submits the results to the cabinet. If the first draw tap sample in the water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines pursuant to subsection (2) of this section. To demonstrate compliance with subsections (1) to (4) of this section, a system shall report to the cabinet the information specified in Section 12(6) of this administrative regulation.

Section 7. Public Education and Supplemental Monitoring Requirements. A water system that exceeds the lead action level, based on tap water samples collected in accordance with Section 8 of this administrative regulation, shall deliver the public education materials contained in subsections (1) and (2) of this section, in accordance with the requirements of subsection (3) of this section.

(a) Community water systems. A community water system shall include the text in subparagraphs 1 to 4 of this paragraph in all of the printed materials it distributes through the community water system program, subject to the exceptions listed in this paragraph. A system may delete information pertaining to lead service lines, upon approval by the cabinet, if no lead service line exists in the water system's service area. Public education language in subparagraph 4(b)(i) and (ii) of the paragraph may be modified regarding building permit, record availability, and consumer access to these records, if approved by the cabinet. A system may also continue to use preprinted materials that meet the public education language requirements in this administrative regulation, as in effect July 27, 1994. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

4. Introduction. The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of fifteen (15) parts per billion (ppb) or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by [insert date when corrosion control will be completed for your system]. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of more than fifteen (15) ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at [insert water system's phone number]. This brochure explains the steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

2. Health effects of lead. Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pottery, and water. Lead can pose a significant risk to your health if too much of it builds up in your body. Lead levels in the body increase over many years and can cause damage to the brain, red blood cells, and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—like dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often and to try to make sure they only put food in their mouths.

3. Lead in drinking water (a) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formula and concentrated juices that are mixed with water. The EPA estimates that drinking water contributes to about twenty (20) percent or more of a person's total exposure to lead.

(b) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass- and chrome-plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than two tenths (0.2) percent lead, and restricted the lead content of faucets, pipes, and other plumbing materials to eight and zero tenths (0.8) percent.

5. When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. The means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

Steps you can take in the home to reduce exposure to lead in drinking water.

Despite our best efforts, we have learned of many instances in which water systems have not been in full compliance with the requirements of this program. Therefore, we encourage you to take steps to reduce your exposure to lead in drinking water. We recommend that you take the following precautions:

1. Let the water run from the tap before using it for drinking or cooking. Any time the water in a faucet has gone unused for more than six (6) hours. The longer water resides in your home, the more it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about fifteen (15) to thirty (30) seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one (1) minute, before drinking. Although total fluoride or chlorination flushing flushes lead out of the water system, our home plumbing systems, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one (1) or two (2) gallons of water and costs less than [insert cost estimate based on flushing]
ing two (2) times a day for thirty (30) days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, let the water flow before using it may not work to lessen your risk from lead. (ii) Plumbing fixtures made of certain types of unlined metal, such as lead solder and leaded acid-basin may also be turned off and replaced by nontechnical ones, such as stainless steel, brass, or copper pipes. (iii) Remove the lead-solder and lead from the plumbing materials installed in new or existing homes, or homes in which the plumbing has recently been replaced, by removing the faucets and running the water for 30 minutes. (iv) If your copper pipes are joined with lead solder that has been in place for more than 100 years, remove the pieces that contain lead. The plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notice your Kentucky Department of Environmental Protection about the violation.

(iv) Determine whether or not the service line that connects your house to the water main is lead or lead-free. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the records of the Kentucky Office of Housing, Building, and Construction. A licensed plumber can check this number to see if your home's plumbing contains lead solder, lead pipe, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than fifteen (15) ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the portion of the line we own. If the line is only partially owned by the water company, we may take steps to minimize lead in your drinking water by (i) reducing water pressure (ii) reducing water temperature, and (iii) reducing water temperature. We are required to provide the owner of the privately-owned portion of the line with information on how to replace the privately-owned portion of the service line, and offer to replace that portion of the line at the owner's expense. If we replace only the portion of the line that we own, we also are required to notify you in advance and provide you with information on how to replace the service line to your own satisfaction. You also can take steps to minimize lead levels in your drinking water by (i) reducing water pressure (ii) reducing water temperature. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at (502) 569-8323.

1. Introduction. The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Some drinking-water samples taken from this facility have lead levels below the EPA action level of fifteen (15) parts per billion (ppb). If your water sample contains lead, contact your local water company or health department for additional information. (3) (a) The subsection (b) shall include the following text in all of the printed materials it distributes through its lead public education program. A water system may delete information pertaining to lead service lines upon approval by the cabinet if no lead service lines exist in the water system's service area. Additional information presented by a system shall be consistent with the information above and be in plain English that can be understood by the public.

2. Limitation of lead. Lead is found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells, and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can have serious mental and physical effects on small children, and may affect a child's development. In addition, a child at play often comes into contact with sources of lead contamination, like dirt and dust, that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only eat food in their mouths.

3. Lead in drinking water.

4. Lead in drinking water, although rarely the sole cause of lead poisoning, is significantly increased by a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrates that are mixed with water. The EPA estimates that drinking water can make up twenty (20) percent or more of a person's total exposure to lead. Lead is unusual among drinking water contaminants in that it should be investigated. Be sure to check the actual performance of a specific home-treatment device before-and-after installing the unit.

5. Purchase bottled water for drinking and cooking. Purchase bottled water for drinking and cooking.

6. You can consult a variety of sources for additional information. You can contact your water supplier for more information on lead and its effects on the health of your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality. You can contact your local government agencies that can be contacted include:

7. (i) [insert the name of your city or county's department of public utilities and phone number] can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality. (ii) [insert the name of your city or county's department that issues building permits and phone number] can provide you with information about building-permit requirements that should contain the names of plumbing contractors that plumbed your home; and

8. (iii) [The Cabinet for Health and Family Services at (502) 664-3970 or the [insert name of your city or county's health department and phone number] can provide you with information about the health effects of lead and how you can have your child's blood tested.

9. The following is a list of some state approved laboratories in your area that you can call to have your water tested for lead. [Insert names and phone numbers of at least two laboratories].
seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome-plated brass faucets, and in a number of instances已在head SEE BY. In 1986, Congress banned the use of lead solder containing greater than two-tenths (0.2) percent lead, and restated the lead content of faucets, pipes, and other plumbing materials to 0.8%. When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after the water has not been used all day, can contain fairly high levels of lead.

4) Slope-you can take to reduce exposure to lead in drinking water.

a) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water stays in plumbing the more lead it may contain. flushing the tap means running the cold-water faucet for about fifteen (15) thirty (30) seconds. Although it dashing flushing or allowing water to run through a portion of the plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing water is a simple and inexpensive measure you can take to protect your health. It usually works better than relying on the lead content of water.

b) Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and then heat it.

c) The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water for drinking and cooking.

d) You can consult a variety of sources for additional information on your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(i) [Insert the name or title of facility official if appropriate] at [Insert phone number] can provide you with information about your facility's water supply, and

(ii) [Insert the name or title of the Cabinet for Health and Family Services] at [Insert phone number] can provide you with information about the health effects of lead.

2) Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under an lead public education program to television and radio stations for broadcasting:

(a) Why should everyone want to know what's about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for [Insert free or per sample]. You can contact the [Insert name of the city or water system] for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(b) To have your water tested for lead, or to get more information about this public health concern, please call [Insert the phone number of the city or water system].

3) Delivery of a public education program.

(a) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language.

(b) A community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with Section 8 of this administrative regulation and that is not already repeating public education tasks pursuant to paragraph (e), (g) or (h) of this subsection, shall, within sixty (60) days of exceeding the action level:

1) Insert notices in each customer's water utility bill containing the information in subsection (1)(a) of this section, along with the following alert on the water bill itself in large print: "SOME HOUSES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

b) A community water system having a billing cycle that does not include a billing within sixty (60) days of exceeding the action level, or that is not able to insert information in the water utility bill with a mailing date less than thirty (30) days before the date of the mailing, may use a separate mailing to deliver the information in subsection (1)(a) of this section, if the information is delivered to each customer within sixty (60) days of exceeding the action level. The water system shall also include the "alert" language specified in clause (a) of this subparagraph.

2) Submit the information in subsection (1)(c) of this section to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

3) Deliver pamphlets or brochures that contain the public education materials in subsection (1)(a) and (d) of this section to facilities and organizations, including the following:

a) Public schools or local school boards;

b) City or county health department;

c) Women, infants, and children (WIC) head start programs whenever available;

d) Public and private hospitals and clinics;

e) Pediatricians;

f) Family planning clinics; and

g) Local welfare agencies.

4) Submit the public service announcement in subsection (2) of this section, to at least five (5) of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(c) A community water system shall repeat the tasks contained in paragraph (b) 1, 2, and 3 of this subsection every twelve (12) months, and the tasks contained in paragraph (b) 4 of this subsection every six (6) months for as long as the system exceeds the lead action level.

(d) Within sixty (60) days after it exceeds the lead action level, unless it already is repeating public education tasks pursuant to paragraph (e) of this subsection, a nontransient, noncommunity water system shall deliver the public education materials specified by subsection (1)(b) of this section or the public education material specified by subsection (1)(b) of this section to follow.

1) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system, and

2) Distribute informational pamphlets or brochures on lead in drinking water to each person served by the nontransient, noncommunity water system. The system may use electronic transmission instead of or combined with printed material, if it achieves at least the same coverage.

(e) A nontransient, noncommunity water system shall repeat the tasks contained in paragraph (d) of this subsection at least once every calendar year in which the system exceeds the lead action level.

(f) A water system may discontinue delivery of public education materials if the system has not met the lead action level during the most recent six (6) month monitoring period conducted pursuant to Section 8 of this administrative regulation. The system shall recommit public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(g) A community water system may apply to the cabinet, in writing, to use the lead specification in subsection (1)(b) of this section instead of the text in subsection (1)(a) of this section and to perform the tasks listed in paragraphs (d) and (e) of this subsection instead of the tasks in paragraphs (b) and (c) of this subsection if:

1) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices, and

2) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(h) A community water system that serves 3,000 or fewer people may omit the tasks contained in paragraph (b) 4 of this subsection if it distributes notices containing the information contained in subsection (1)(e) of this section to every household served by...
the system, the system may further limit its public education program as follows:

a. A system that serves 500 or fewer people may forego the task contained in paragraph (b)2 of this subsection. The system may limit the distribution of the public education material required under paragraph (b)3 of this subsection to facilitate and organize services by the system that are most likely to be violated regularly by pregnant women and children, unless it is notified by the cabinet in writing that it shall make a broader distribution.

b. If approved by the cabinet in writing, a system that serves 51 to 3,300 people may omit the task in paragraph (b)3 of this subsection or limit the distribution of the public education material required under paragraph (b)3 of the subsection to facilitate and organize services by the system that are most likely to be violated regularly by pregnant women and children.

2. A community water system that serves 3,300 or fewer people that delivers public education in accordance with subparagraph 1 of this paragraph shall request the required public education tasks at least once during each calendar year in which the system exceeds the load of certain levels.

(4) Supplemental monitoring and notification of results. A water system that fails to meet the lead action levels on the basis of tap samples collected in accordance with Section 8 of this administrative regulation shall offer to sample or have sampled the tap water of any customer who requests it. The system may pay for collecting or analyzing the sample, and the system may collect and analyze the sample itself.

Section 6—Monitoring Requirements for Lead and Copper in Tap Water. (1) Sample site location.

(a) By the applicable date for commencement of monitoring under subsection (4) of this section, each water system shall complete a material evaluation of its distribution system to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system is able to collect the number of lead and copper tap samples required in subsection (3) of this section. All sites from which first-draw samples are collected shall be selected from this pool of targeted sampling sites. A sampling site shall not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(b) A water system shall use the information on lead, copper, and galvanizing steel that it shall collect under 401 KAR 3:350, Section 1 and conduct a material evaluation. If an evaluation of the information collected pursuant to 401 KAR 3:350 is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in the subsection, the water system shall review the source of information listed in subparagraphs (4) through (6) of this paragraph below to identify a sufficient number of sampling sites. In addition, the system shall seek to collect the information listed in subparagraphs 1 through 3 of this paragraph if possible in the course of its normal operations, for instance, checking service line materials when reading water meters or performing maintenance activities.

4. All plumbing code, permits, and records in the files of the building department which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

5. All inspections and records of the distribution system that indicate the material composition of the service connections; and

6. All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(c) Tier 1 sampling sites.

1. The sampling sites selected for a community water system's sampling pool, "Tier 1 sampling sites", shall consist of single-family structures that:

a. Do contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

b. Are served by a lead service line.

2. If multiple-family residences comprise at least twenty (20) percent of the structures served by a water system, the system may include those types of structures in its sampling pool.

(c) Tier 2 sampling sites. A community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with Tier 2 sampling sites, consisting of buildings, including multiple-family residences that:

1. Do contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

2. Are served by a lead service line.

(d) Tier 3 sampling sites. A community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with Tier 3 sampling sites, consisting of single-family structures that contain copper pipes with lead solder installed before 1983.

2. Tier 3 sampling sites. A community water system with insufficient Tier 1, Tier 2, and Tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. For the purpose of this subparagraph, a representative site shall be a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(f) Tier 4 sampling sites. A nontransient noncommunity water system shall consist of buildings that:

1. Do contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

2. Are served by a lead service line.

(g) A nontransient noncommunity water system with insufficient Tier 1 sites that meet the targeting criteria in paragraph (f) of this subsection shall complete its sampling pool with representative sites that contain copper pipes with lead solder installed before 1983.

2. If additional sites are needed to complete the sampling pool, the nontransient noncommunity water system shall use representative sites throughout the distribution system. For the purpose of this subparagraph, a representative site shall be a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(h) A water system whose distribution system contains lead service line shall draw fifty (50) percent of the samples it collects during each monitoring period from sites that contain lead pipe, or copper pipe with lead solder, and fifty (50) percent of the samples from sites served by a lead service line. A water system that is not able to identify a sufficient number of sampling sites served by a load service line shall collect first draw samples from all of the sites it identifies as being served by the line.

(3) Sample collection methods.

(a) All tap samples for lead and copper collected in accordance with this administrative regulation, with the exception of lead service line samples collected under Section 6 of this administrative regulation and samples collected under paragraph (e) of this subsection, shall be first draw.

(b) Each first-draw tap sample for lead and copper shall be one (1) liter in volume and shall be collected in the plumbing system of each sampling site for at least six (6) hours.

2. A first-draw sample from residential housing shall be collected from the galvanized tap or bathroom sink tap.

3. A final-draw sample from a nonresidential building shall be one (1) liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption.

4. A non-first-draw sample collected instead of a first-draw sample pursuant to paragraph (e) of this subsection shall be one (1) liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption.

5. A first-draw sample may be collected by the system or the system may allow residents to collect a first-draw sample after informing the residents of the sampling procedures specified in this paragraph.

6. Analysis of a first-draw sample may be done up to fourteen (14) days after the sample is collected. After acidification to acidify the sample shall be placed in the vial and transported to the vial in a container for the time specified in the approved EPA method before the sample is analyzed.

7. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(e) Each servio-line sample shall be one (1) liter in volume.
and shall have stood motionless in the lead service line for at least six (6) hours. A lead service line sample shall be collected in one (1) of the following three (3) ways:

1. At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line.
2. Tapping directly into the lead service line.
3. If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(d) A water system shall collect each first-draw tap sample from the same sampling site from which it collected a previous sample. If the water system is not able to gain entry to a sampling site to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool if the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(e) A transient noncommunity water system, or a community water system that meets the criteria of Section 7-2(c)(4) of this administrative regulation, that does not have enough taps that are able to supply first-draw samples, may apply to the cabinet in writing to substitute nonfirst-draw samples. These systems shall collect as many first-draw samples from appropriate tap locations as possible and identify sampling times and locations that would likely result in the longest standing time for the water samples collected.

3. Number of samples. A water system shall collect at least one (1) sample during each monitoring period specified in subsection (2) of this section from the number of sites listed in the column of the table in this subsection headed “Standard monitoring.” A system conducting reduced monitoring under subsection (4)(d) of this section shall collect at least one (1) sample from the number of sites specified in the column of the table in this subsection headed “Reduced monitoring” during each monitoring period specified in subsection (4)(d) of this section. The reduced monitoring sites shall be representative of the sites required for standard monitoring. The cabinet may specify sampling locations if a system is conducting reduced monitoring.

### System Size (# of People Served)  | Standard Monitoring | Reduced Monitoring
--- | --- | ---
greater than 100,000 | 100 | 50
10,001 to 100,000 | 60 | 30
2,001 to 10,000 | 40 | 20
501 to 2,000 | 20 | 10
101 to 500 | 10 | 5
less than or equal to 100 | 5 | 5

(a) Initial tap sampling. The first six (6) month monitoring period for small, medium-size and large systems shall have begun on the following dates:

| System Size (# of People Served) | First Six (6) Month Monitoring Period Begun On |
--- | ---
greater than 100,000 | January 1, 1992
10,001 to 100,000 | January 1, 1992
2,001 to 10,000 | January 1, 1992
501 to 2,000 | July 1, 1992
101 to 500 | July 1, 1993
less than or equal to 100 | July 1, 1993

1. A large system shall monitor during two (2) consecutive six (6) month periods.
2. A small or medium-size system shall monitor during each six (6) month monitoring period until:
   a. The system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under Section 3 of this administrative regulation. If so, the system shall continue monitoring in accordance with paragraph (a) of this subsection;
   b. The system meets the lead and copper action levels during two (2) consecutive six (6) month monitoring periods. If so, the system may reduce monitoring in accordance with paragraph (b) of this subsection.

(b) Monitoring after installation of corrosion control and source water treatment.
1. Any large system that installs optimal corrosion control treatment pursuant to Section 3-3(4)(6) of this administrative regulation shall monitor during two (2) consecutive six (6) month monitoring periods by the date specified in Section 3-3(4)(6) of this administrative regulation.
2. Any small or medium-size system that installs optimal corrosion control treatment pursuant to Section 3-3(4)(c) of this administrative regulation shall monitor during two (2) consecutive six (6) month monitoring periods by the date specified in Section 3-3(4)(c) of this administrative regulation.
3. Any system that installs source water treatment pursuant to Section 3-3(4)(c) of this administrative regulation shall monitor during two (2) consecutive six (6) month monitoring periods by the date specified in Section 3-3(4)(c) of this administrative regulation.
4. After the cabinet specifies the values for water quality control parameters under Section 3-3(4)(a) of this administrative regulation, the system shall monitor during each subsequent six (6) month monitoring period, with the first monitoring period to begin on the date the cabinet specifies the optimal values under Section 3-3(4)(a) of this administrative regulation.
5. Reduced monitoring.
   a. A small or medium-size water system that meets the lead and copper action levels during each of two (2) consecutive six (6) month monitoring periods may reduce the number of samples in accordance with subsection (5) of this section, and reduce the frequency of sampling by the same proportion.
   b. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 3-3(4)(a) of this administrative regulation during each of two (2) consecutive six (6) month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in accordance with subsection (5) of this section, if it receives written approval from the cabinet.
   c. The cabinet shall review the monitoring, treatment, and other relevant information submitted by the water system in accordance with Section 12-1 of this administrative regulation, and shall notify the system in writing if it determines the system is eligible to begin reduced monitoring pursuant to this subparagraph.
   d. The cabinet shall review, and if appropriate, revise its determination if the system submits new monitoring or treatment data, or if other data relevant to the number and frequency of tap sampling become available.
   e. A small or medium-size water system that meets the lead and copper action levels during three (3) consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three (3) years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 3-3(4)(a) of this administrative regulation during three (3) consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three (3) years if it receives written approval from the cabinet.
   f. The cabinet shall review the monitoring, treatment, and other relevant information submitted by the water system in accordance with Section 12-1 of this administrative regulation, and shall notify the system in writing if it determines the system is eligible to reduce the frequency of monitoring to once every three (3) years.
   g. The cabinet shall review, and if appropriate, revise its determination if the system submits new monitoring or treatment data, or if other data relevant to the number and frequency of tap sampling become available.

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monitoring on an annual frequency.

(2) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria specified in subsection (3) of this section after it has completed two (2) subsequent consecutive six (6) month rounds of monitoring that meet the criteria of subsection (1) of this paragraph.

(b) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites specified in subsection (3) of this section after it has completed two (2) subsequent consecutive six (6) month rounds of monitoring that meet the criteria specified in subsection (1) of this paragraph.

(2) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites specified in subsection (3) of this section after it has completed two (2) subsequent consecutive six (6) month rounds of monitoring that meet the criteria of subsection (1) of this paragraph and the system has received written approval from the cabinet that it is appropriate to resume reduced monitoring on an annual frequency.

(3) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of subsection (3) of this section and the system has received written approval from the cabinet that it is appropriate to resume triennial monitoring.

(4) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of subsection (3) of this section and the system has received written approval from the cabinet that it is appropriate to resume triennial monitoring.

(5) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria specified in subsection (3) of this section and the system has received written approval from the cabinet that it is appropriate to resume triennial monitoring.

(6) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria specified in subsection (3) of this section and the system has received written approval from the cabinet that it is appropriate to resume triennial monitoring.

(7) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria specified in subsection (3) of this section and the system has received written approval from the cabinet that it is appropriate to resume triennial monitoring.
(a) and (b) of this subsection only for lead, or only for copper, may apply to the cabinet for a waiver to reduce the frequency of tap water monitoring to once every nine (9) years for that contaminant only, or a "partial waiver."

(b) Materials criteria. The system shall demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials or copper-containing materials, as those terms are used in this paragraph, as follows:

1. Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead, or a "lead waiver," the water system shall provide certification and supporting documentation to the cabinet that the system is free of lead-containing materials, as follows:
   - a. It contains no plastic pipes that contain lead plasticizers; and
   - b. It is free of lead service lines, lead pipe, lead-soldered pipe joints, and leaded brass or bronze-alloy fittings and fixtures, unless the fittings and fixtures meet the specifications of a standard established pursuant to 42 U.S.C. 300g-6(e).

2. Copper. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for copper, or a "copper waiver," the water system shall provide certification and supporting documentation to the cabinet that the system contains no copper pipes or copper service lines.

(c) Monitoring frequency for waiver application. The system shall notify the system of its waiver determination, in writing, setting forth the basis of its decision and any condition of the waiver. As a condition of the waiver, the cabinet may require the system to perform specific activities to avoid the risk of lead or copper concentration of concern in tap water. Specific activities shall be limited to monitoring or periodic outreach to customers to remind them to avoid internal storage of materials that might leach lead or copper at the tap, or other activities documented by the system to support its waiver request. The system shall once every three (3) years, or at any time during which the system becomes aware of any new or other significant contamination to tap water, submit a report to the cabinet describing the measures the system has taken to maintain the waiver.

(d) Cabinet approval of waiver application. The system shall notify the cabinet of its waiver determination, in writing, setting forth the basis of its decision and any conditions of the waiver. As a condition of the waiver, the cabinet may require the system to perform specific activities to avoid the risk of lead or copper concentration of concern in tap water. Specific activities shall be limited to monitoring or periodic outreach to customers to remind them to avoid internal storage of materials that might leach lead or copper at the tap, or other activities documented by the system to support its waiver request. The system shall once every three (3) years, or at any time during which the system becomes aware of any new or other significant contamination to tap water, submit a report to the cabinet describing the measures the system has taken to maintain the waiver.

Section 8. Monitoring Water-Quality Parameters. A large water system or a small or medium size system that exceeds the lead or copper action level shall monitor water-quality parameters in addition to lead and copper in accordance with this section.

1. General requirements.
   (a) Sample collection methods.
   (b) Sample collection.
   (c) Sample size.

2. Sample collection at the entry points to the distribution system. The system shall submit samples to the cabinet at any point to the distribution system during periods of normal operating conditions, or at any time when water is representative of all sources being used.

(b) Number of samples.
   1. The system shall submit samples in accordance with the water-quality parameters as specified in subsection (d) of this section from the following number of sites:

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th># of Sites For Water-Quality Parameters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 100,000</td>
<td>25</td>
</tr>
<tr>
<td>10,000 to 100,000</td>
<td>10</td>
</tr>
<tr>
<td>5,001 to 10,000</td>
<td>5</td>
</tr>
<tr>
<td>2,001 to 5,000</td>
<td>2</td>
</tr>
<tr>
<td>1,001 to 2,000</td>
<td>1</td>
</tr>
</tbody>
</table>
Less than or equal to 100

2. Except as provided in subsection (3)(c) of this section, a system shall collect two (2) samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in subsection (2) of this section. During each monitoring period specified in subsections (3) to (5) of this section, a system shall collect one (1) sample for each applicable water quality parameter at each entry point to the distribution system.

(2) Initial sampling. A large water system shall measure the applicable water quality parameters as specified in paragraphs (a) through (g) of this subsection below at taps and at each entry point to the distribution system during each six (6) month monitoring period specified in Section 8(4)(a) of the administrative regulation during which the system exceeds the lead or copper action level. Applicable water parameters shall be:

(a) pH;
(b) Alkalinity;
(c) Orthophosphate, if an inhibitor containing a phosphate compound is used;
(d) Silica, if an inhibitor containing a silicate compound is used;
(e) Calcium;
(f) Conductivity; and
(g) Water temperature.

(3) Monitoring after installation of corrosion control. A large system that installs optimal corrosion control treatment pursuant to Section 2(4)(d) of the administrative regulation shall measure the water quality parameters at the locations and frequencies specified in paragraphs (a) through (c) of this subsection below during each six (6) month monitoring period specified in Section 8(4)(d) of this administrative regulation. A small or medium-size system that installs optimal corrosion control treatment shall conduct the monitoring during each six (6) month monitoring period specified in Section 8(4)(d)(2) of this administrative regulation. In which the system exceeds the lead or copper action level.

(a) At taps, two (2) samples for:

\[ \text{pH} \]

2. Alkalinity.

3. Orthophosphate, if an inhibitor containing a phosphate compound is used.

4. Silica, if an inhibitor containing a silicate compound is used.

5. Calcium, if a calcium carbonate stabilizer is used as a part of corrosion control.

(b) Except as provided in paragraph (c) of this subsection, at each entry point to the distribution system, at least one (1) sample no less frequently than every two (2) weeks for:

\[ \text{Alkalinity} \]

(4) Monitoring after water quality data for optimal corrosion control are specified. After the cabinet specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment pursuant to Section 4(5)(a) of the administrative regulation, a large system shall measure the applicable water quality parameters in accordance with subsection (3) of this section and determine compliance with the requirements of Section 4(7) of this administrative regulation every six (6) months with the first six (6) month period to begin on the date the cabinet specifies the optimal values under Section 4(6) of this administrative regulation. A small or medium-size system shall conduct the monitoring during each six (6) month period specified in paragraph (a) in which the system exceeds the lead or copper action level. For the small and medium-size system that is subject to a reduced monitoring frequency pursuant to Section 8(4)(b) of this administrative regulation when the action level exceeds occur, the end of the applicable six (6) month period under the paragraph shall coincide with the end of the applicable monitoring period specified in Section 8(4)(d) of this administrative regulation. Compliance with cabinet-designated optimal water quality parameter values shall be determined as specified in Section 4(7) of this administrative regulation.

(f) Reduced monitoring.

(a) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two (2) consecutive six (6) month monitoring periods under subsection (4) of this section shall continue monitoring at the entry points to the distribution system as specified in subsection (3)(b) of this section. The system may conduct eight (8) tap samples for applicable water quality parameters from the following reduced number of cites during each six (6) month monitoring period:

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th>Reduced # Sites for Water Quality Parameters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 100,000</td>
<td>10</td>
</tr>
<tr>
<td>10,001 to 100,000</td>
<td>2</td>
</tr>
<tr>
<td>5,001 to 10,000</td>
<td>2</td>
</tr>
<tr>
<td>501 to 5,000</td>
<td>2</td>
</tr>
<tr>
<td>101 to 500</td>
<td>2</td>
</tr>
<tr>
<td>Less than or equal to 100</td>
<td>3</td>
</tr>
</tbody>
</table>

(b) A water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 4(6) of this administrative regulation during three (3) consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (a) of this subsection from every six (6) months to annually.

A water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 4(6) of this administrative regulation during three (3) consecutive years of annual monitoring under subsection (4) may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (a) of this subsection from annually to every three (3) years.

2. A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (a) of this subsection to every three (3) years if it demonstrates during two (2) consecutive monitoring periods that:

a. Its tap water lead level at the 90th percentile is less than or equal to the practical quantitation limit for lead specified in Section 11 of the administrative regulation;

b. Its tap water copper level at the 90th percentile is less than or equal to 0.05 mg/L for copper in Section 2(4)(b) of this administrative regulation; and

c. The system has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 4(6) of this administrative regulation.

(c) A water system that conducts sampling annually shall collect these samples every three years throughout the year to reflect seasonal variability.

3. A water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by
the cabinet under Section 4(6) of this administrative regulation for more than nine (9) days in a six (6) month period specified in Section 4(7) of this administrative regulation shall resume distribution system tap water sampling in accordance with the number-and-frequency requirements in subsection (4) of this section.

2. The system may resume:

(a) Annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (a) of this subsection after it has completed two (2) subsequent consecutive six (6) month rounds of monitoring that meet the criteria of that paragraph; or

(b) Triennial monitoring for water quality parameters at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (a) or (b) of this subsection.

(3) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of the section shall be considered by the system and the cabinet in making any determinations, for example, determining concentrations of water quality parameters, under this section or Section 4 of this administrative regulation.

Section 10. Monitoring Requirements for Lead and Copper in Source Water. (1) Sample location, collection methods, and number of samples.

(a) A water system that fails to meet the lead or copper action level on the base of tap samples collected in accordance with Section 4 of this administrative regulation shall collect and submit source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

1. A ground water system shall take a minimum of one (1) sample at every entry point to the distribution system that is representative of each well after treatment, called a "sampling point". The system shall take one (1) sample at each sampling point unless conditions make another sampling point more representative of each source or treatment plant.

2. A surface water system shall take a minimum of one (1) sample at every entry point to the distribution system after an application of treatment or in the distribution system at a point that is representative of each source after-treatment, called a "sampling point". The system shall take one (1) sample at each sampling point unless conditions make another sampling point more representative of each source or treatment plant.

3. If a system draws water from more than one (1) source and the sources are connected below the system well sample, it shall take one (1) sample at each entry point to the distribution system during periods of normal operating conditions, for example, when water is representative of all sources being used.

4. Compositing may be used to reduce the total number of samples that shall be analyzed. Compositing of samples shall be done by certified laboratory personnel. Composit samples from a maximum of five (5) samples are allowed. If the lead concentration in the composite sample is greater than or equal to 0.005 mg/L or the copper concentration is greater than or equal to 0.16 mg/L, then either:

(a) A follow-up sample shall be taken and analyzed within fourteen (14) days at each sampling point included in the composite; or

(b) If duplicates or sufficient quantities from the original samples from each sampling point used in the composite are available, the system may use these instead of resampling.

(b) If the results of sampling indicate an exceedance of maximum permissable source water levels established under Section 5(2)(c) of this administrative regulation, the cabinet may require the water system to collect one (1) additional sample as soon as possible after the initial sample was taken, but not to exceed two (2) weeks at the same sampling point. If a confirmation sample required by the cabinet is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the maximum permissable levels specified by the cabinet. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the Practical Quantitation Limit, PQL, shall either be considered as the measured value or be considered one-half (1/2) the PQL.

(2) Monitoring frequency after system exceeds tap water action level. A system that exceeds the lead or copper action level at the tap shall collect one (1) source water sample from each entry point to the distribution system within six (6) months after the occurrence.

(3) Monitoring frequency after installation of source water treatment. A system that installs source water treatment pursuant to Section 5(1)(a) of this administrative regulation shall collect an additional source water sample from each entry point to the distribution system during the three (3) consecutive six (6) month periods following the deadline specified in Section 5(2)(c) of this administrative regulation.

(4) Monitoring frequency after maximum permissible source water levels are specified by the cabinet. The cabinet determines that source water treatment is no longer necessary.

(a) A system shall monitor the frequency specified below if the cabinet specifies maximum-permissible-source-water levels under Section 5(2)(c) of this administrative regulation or determines that the system is no longer required to install source water treatment under Section 5(2)(b) of this administrative regulation.

1. A water system using only groundwater shall collect samples once during the three (3) year compliance period in effect when the applicable cabinet determination under this paragraph is made. The system shall collect samples once during each subsequent compliance period.

2. A water system using surface water, or a combination of surface and groundwater, shall collect samples once during each year. The first annual monitoring period shall begin on the date on which the applicable determination is made under this paragraph.

(b) A system may conduct source water sampling for lead or copper if the system meets the criteria below for the specific contaminant in tap water samples during the entire source water sampling period assigned to the system under paramater (a) of this subsection.

(5) Reduced monitoring frequency.

(a) A water system using only groundwater may reduce the monitoring frequency for lead and copper in source water to once during each nine (9) year compliance cycle if the system meets one of the following criteria:

1. The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the cabinet in Section 5(2)(c) of this administrative regulation during at least three (3) consecutive compliance periods under subsection (4) of this section.

2. The cabinet has determined that source water treatment is not needed and the system demonstrates that, during at least three (3) consecutive compliance periods in which sampling was conducted under subsection (4)(a) of this section, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(b) A water system using surface water, or a combination of surface water and groundwater, may reduce the monitoring frequency in subsection (4)(a) of this section to once during each nine (9) year compliance cycle if the system meets one of the following criteria:

1. The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the cabinet in Section 5(2)(c) of this administrative regulation for at least three (3) consecutive years;

2. The cabinet has determined that source water treatment is not needed and the system demonstrates that, during at least three (3) consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(c) A water system that uses a new source of water shall not be eligible for reduced monitoring for lead or copper until concentrations in samples collected from the new source during three (3) consecutive monitoring periods are below the maximum permissi-
Section 11. Analytical Methods. Analyze for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature. Analyses conducted under the administrative regulation of 40 C.F.R. 141.23(k) and 141.50, in effect on July 1, 2003, adopted without change in Section 14 of this administrative regulation.

Section 12. Reporting Requirements. Water systems shall report the following information to the cabinet in accordance with this section:

(a) Reporting requirements for tap-water monitoring for lead and copper and for water quality parameter monitoring,

(b) Except as provided in subparagraph 7 of this paragraph, a water system shall report the information specified below for all tap-water samples specified in Section 8 of this administrative regulation:

(c) For the first time, the sampling period is defined as the ten (10) days following the end of each applicable monitoring period specified in Sections 6 and 7 of this administrative regulation: i.e., every six (6) months, annually, every three (3) years, or every nine (9) years:

1. The results of all tap-water samples for lead and copper, including the location of each tap and the criteria under Section 8(1)(c), (d), (e), (f), (h), and (i) of this administrative regulation under which the tap was selected for the system's sampling pool;

2. Documentation for each tap-water sample for which a water system requests installation pursuant to Section 8(1)(b) of this administrative regulation;

3. The 90th percentile lead and copper concentrations measured from all lead- and copper-tap-water samples collected during each monitoring period, calculated in accordance with Section 2(4)(c) of this administrative regulation;

4. With the exception of initial tap-water sampling conducted pursuant to Section 8(1)(c) of this administrative regulation, the system shall designate any site which was not sampled for previous monitoring periods, and include an explanation of why sampling sites have changed;

5. The results of all tap-water samples for pH, nitrate, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under Section 6(2) to (6) of this administrative regulation;

6. The results of all samples collected at the entry point to the distribution system, or, for systems with more than one (1) entry point, at each entry point to the distribution system, for applicable water quality parameters under Section 9(2) to (6) of this administrative regulation, and

7. For water systems that shall report the results of all water quality parameter samples collected under Section 9(3) through (6) of this administrative regulation during each monitoring period within the first ten (10) days following the end of the monitoring period.

(b) For a nontransient noncommunity water system, or a community water system that meets the criteria of Section 7(1)(g) of this administrative regulation, that does not have enough taps to provide first-draw samples, the system shall provide written documentation to the cabinet identifying standing times and locations for enough nonfirst-draw samples to make up its sampling pool under Section 8(1)(c) of this administrative regulation. The system shall submit the following information to the cabinet in accordance with the first applicable monitoring period under Section 8(1)(c) of this administrative regulation that begins after April 1, 2000:

(c) No later than sixty (60) days after the addition of a new source or a change in water treatment, unless earlier notification is required by 401 KAR 8:400, a water system that has been deemed to have optimized corrosion control under Section 8(1)(c) of this administrative regulation, a water system subject to reduced monitoring pursuant to Section 8(1)(c) of this administrative regulation, or a water system subject to a monitoring waiver pursuant to Section 8(1)(c) of this administrative regulation, shall send written documentation to the cabinet demonstrating the changes made, shall provide the following information to the cabinet in writing by the specified deadline:

(i) By the start of the first applicable monitoring period in Section 8(1)(c) of this administrative regulation, a small water system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of Section 8(1)(b) and (c) of this administrative regulation.

(ii) No later than ninety (90) days after the monitoring previously conducted pursuant to Section 8(1)(b) or (c) of this administrative regulation, a small system desiring to maintain its monitoring waiver shall provide the information required by Section 8(1)(b) and (c) of this administrative regulation.

(iii) No later than sixty (60) days after it becomes aware that it is no longer free of lead-containing or copper-containing material, as approved by this system, shall provide written notification to the cabinet, setting forth the circumstances resulting in the lead-containing or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to take to remove these materials.

(d) Ground-water systems that limit water-quality parameter monitoring to a subset of entry points under Section 6(1)(c) of this administrative regulation shall provide, by the beginning of the monitoring, written correspondence to the cabinet that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water-quality and treatment conditions throughout the system.

(e) Source water monitoring requirements:

(i) A water system shall submit to the cabinet the sampling results for all source-water samples collected during each monitoring period within the first ten (10) days following the end of each source-water monitoring period, to the extent annually, per compliance period, and per compliance cycle, specified in Section 10 of this administrative regulation.

(ii) With the exception of the first round of source-water sampling conducted pursuant to Section 10(2) of this administrative regulation, the system shall notify any site which was not sampled during the previous monitoring periods, and include an explanation of why the sampling point has changed.

(iii) Corrosion control treatment reporting requirements—By the applicable dates under Section 3 of this administrative regulation, a system shall submit the following information to the cabinet:

(a) For a system demonstrating that it has already optimized corrosion control, information required in Section 6(2)(a) or (b) of this administrative regulation;

(b) For a system required to optimize corrosion control, its recommendation regarding optimal corrosion control treatment under Section 4(1) of this administrative regulation;

(c) For a system required to evaluate the effectiveness of corrosion control treatments under Section 4(3) of this administrative regulation, the information received by the cabinet;

(d) For a system required to install optimal corrosion control approved by the cabinet under Section 4(4) of this administrative regulation, a letter certifying that the system has completed installing that treatment;

(e) Source water treatment reporting requirements—By the applicable dates in Section 5 of this administrative regulation, a system shall submit the following information to the cabinet:

(i) If required under Section 5(2)(a) of this administrative regulation, its recommendation regarding source water treatment; and

(ii) For a system required to install source water treatment under Section 5(2)(b) of this administrative regulation, a letter certifying that the system has completed installing the treatment approved or designated by the cabinet within twenty-four (24) months after the cabinet approves or designates the treatment.

(f) Lead service line replacement reporting requirements. A system shall report the following information to the cabinet to demonstrate compliance with the requirements of Section 6 of this administrative regulation:

(i) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 6(1) of this administrative regulation, the system shall demonstrate in writing to the cabinet that it has conducted a materials evaluation, including the evaluation in Section 8(1) of this administrative regulation, to identify the metal number of lead service lines in its distribution system, and shall provide the cabinet with the system's schedule for replacing annually at least seven (7) percent of the initial number of lead service lines.
service lines in its distribution system.

(b) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 6(1) of this administrative regulation, and every twelve (12) months thereafter, the system shall demonstrate to the cabinet in writing that the system has been:

1. Replaced in the previous twelve (12) months at least seven (7) percent of the initial lead service line, or a greater number of lines specified by the cabinet pursuant to Section 6(6) of this administrative regulation, in its distribution system;

2. Conducted sampling which demonstrates that the lead-concentration in all service line samples from an individual line, taken pursuant to Section 6(2)(c) of this administrative regulation, is less than equal to 0.15 mg/L for the total number of lines replaced or which meet the criteria in Section 6(3) of this administrative regulation shall be at least seven (7) percent of the initial number of lead lines identified under subsection (1) of this section, or the percentage specified by the cabinet pursuant to Section 6(6) of this administrative regulation.

(c) The annual letter submitted to the cabinet under paragraph (b) of this subsection shall contain the following information:

1. The number of lead service lines scheduled to be replaced during the previous year of the system’s replacement schedule;

2. The number and location of each lead service line replaced during the previous year of the system’s replacement schedule; and

3. If measured, the water lead-concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(d) A system that collects service line samples following partial lead service line replacement required by Section 6 of this administrative regulation shall report the results to the cabinet within the first ten (10) days of the month following the month in which the system receives the laboratory results. The cabinet may eliminate the reporting requirement for a system if the cabinet determines that the results are not necessary to protect public health. A system shall also report additional information to verify that all partial lead service line replacement activities have taken place.

(e) Public education program reporting requirements.

(f) A water system that is subject to the public education requirements in Section 7 of the administrative regulation shall, within ten (10) days after the end of each period in which the system is required to perform public education tasks in accordance with Section 7(3) of this administrative regulation, send written documentation to the cabinet that contains:

1. A demonstration that the system has delivered the public education materials that meet the content requirements in Section 7(3)(a) of the administrative regulation and the distribution requirements in Section 7(3)(c) of this administrative regulation; and

2. A list of the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform the public education tasks.

(g) If there have been no changes in the distribution list—a system that previously has submitted the information required by paragraph (a)(2) of this subsection shall:

1. Certify that the public education materials were distributed to the same list submitted previously, or

2. Resubmit the information required by paragraph (a)(2) of this subsection.

(h) Reporting of additional monitoring data—A system that collects sampling data in addition to that required by this administrative regulation shall report the results to the cabinet within the first ten (10) days following the end of the applicable monitoring period, under Sections 8, 9, and 10 of this administrative regulation, during which the samples are collected.

Section 14—Recordkeeping Requirements—A system subject to this administrative regulation shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, cabinet determinations, and any other information required by Sections 3 through 10 of this administrative regulation. The water system shall retain the records required by this section for no fewer than twelve (12) years.

Section 15—Public Comment

Section 16—Public Hearing

Section 17—Regulatory Impact Analysis and Tiering Statement

Contact Person: Sandy Grzeszky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes analytical methods, monitoring requirements, and action levels for public water systems to follow for the control of lead and copper.

(b) The necessity of this administrative regulation: Lead and copper in drinking water can be harmful to public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The control of lead and copper in drinking water is essential to protect public health.

(2) If this system 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 adopts federal citations and strikes federal language adopted in the body of a state regulation. The substantive requirements of the existing regulations remain unchanged.

(b) The necessity of the amendment to this administrative regulation: The cabinet believes that this will allow future federal changes in regulatory requirements to be more easily adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation uses federal citations and strikes federal language adopted in the body of a state regulation. These citations will make the administrative regulation conform exactly to federal requirements for lead and copper.

(d) How the amendment will assist in the effective administration of the statutes: The cabinet believes that this amendment will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-
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A new regulation. This administrative regulation applies to 491 public water systems.

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

(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 amendments to this administrative regulation provide federal citations instead of federal language in the body of the state regulation. The substantive requirements of the regulated entities are unchanged in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The costs of complying with this administrative regulation remain unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Public and semipublic water systems will benefit by clearly seeing the requirements of this administrative regulation are no more stringent than the federal requirements.

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

(a) Initially. The required costs of this administrative regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.

(b) On a continuing basis. The required costs of this administrative regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The funding for the drinking water program is a combination of state general funds and federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 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 or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation differs in requirements for community water systems, noncommunity water systems, and transient non-community water 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 administrative regulation applies to public water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 242.10-100(29) and 214.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300q-25) and 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91 establish analytical methods, monitoring requirements and action levels for public water systems to follow for the control of lead and copper.

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

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

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

(c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation are a change in format; they will not impose any additional cost for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation are a change in format; they will not impose 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300q-25), 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91.

2. State compliance standards. KRS 224.10-100(28) and 224.10-110.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91 establish analytical methods, monitoring requirements and action levels for public water systems to follow for the control of lead and copper.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection by-product precursors.

RELATES TO: KRS 224.10-100, 224.10-110, EO 2008-507, 2008-531 [40 C.F.R. 142.60]

STATUTORY AUTHORITY: KRS 224.10-100(29)[30], 224.10-110(2), 40 C.F.R. 141.53, 141.54, [141.30], 141.64, 141.65, 141.130-141.135, 141.600-141.605, 141.620-141.629, 42 U.S.C. 300f through 300q-25 [Chapter 6A [Subchapter XII]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(29)[30] and 224.10-110(2) authorize the [Environmental and Public Protection] cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the maximum contaminant levels for total trihalomethanes and halocetic [haloacetic] acid five (5) to limit the levels of known and unknown disinfection by-products.

Section 1. [Applicability] (1) [This administrative regulation shall be considered a national primary drinking water regulation. (2) This administrative regulation establishes criteria under which:}
VOLUME 35, NUMBER 6 – DECEMBER 1, 2008

(a) A community water system or a nontransient noncommunity water system that adds a chemical disinfectant as a part of the drinking water treatment process shall meet the requirements established in 40 C.F.R. 141.130 through 141.135, 141.620 through 141.625, 141.626 through 141.629, 141.53, 141.54, 141.64, and 141.65, effective July 1, 2007. For the purpose of meeting the requirements of 40 C.F.R. 141.130 through 141.135, effective July 1, 2007, consecutive systems shall monitor in the manner established in Section 2 of this administrative regulation.

1. Modify its practices to meet maximum contaminant levels, or MCLs, and maximum residual disinfectant levels, or MRDLs, listed in Section 3 of this administrative regulation; and

2. Meet the treatment-technique requirements for disinfection by-product precursors in Section 5 of this administrative regulation.

(b) A transient noncommunity water system that uses chlorine dioxide as a disinfectant or oxidant shall modify its practices to meet the MRDL for chlorine dioxide in Section 3 of this administrative regulation.

(1) This administrative regulation establishes MCLs for THM and HAAs and treatment-technique requirements for disinfection by-product precursors to limit the levels of known and unknown disinfection by-products, which may have adverse health effects.

(2) Control of Disinfectant Residues. The addition of a disinfectant is necessary for control of waterborne microbial contaminants. Nonetheless, the MRDLs in Section 3 of this administrative regulation are a system that may increase the residual disinfectant level in the distribution system of chlorine or chloramines, except chlorine dioxide, to a level and for the amount of time necessary to protect public health, to address a specific microbiological-contamination problem caused by circumstances such as:

(a) A distribution line break;
(b) Storm run-off event;
(c) Source water contamination event; or
(d) Cross connection event.

Section 2. Compliance Dates. (1) Community water system and nontransient noncommunity water system. Unless otherwise noted, a community water system or a nontransient noncommunity water system that uses as its source a surface-water or groundwater under the direct influence of surface water shall comply with this administrative regulation.

(2) Transient noncommunity water system. A transient noncommunity water system that uses chlorine dioxide as a disinfectant or oxidant shall comply with the requirement for chlorine dioxide in this administrative regulation.

(3) Consecutive systems. Consecutive water systems shall monitor for trichloromethanes and HAAS as established in this section follows:

1. [a] For purposes of determining the applicability and compliance dates, the sum of the populations of the system producing the water and the system purchasing the water shall be used.

2. [b] Producers. Producer systems shall monitor at a point where water enters the distribution system.

3. [c] Consecutive systems. Consecutive water systems shall monitor for THM and HAAS as established in this section.

4. [d] Purchasers. Purchasers shall monitor at a point where water enters the distribution system.

5. [e] A system that purchases water shall alter distribution operation and maintenance practices necessary to alleviate any potential exceedance of the MCL for THM or HAAS anywhere in its distribution system.

6. [f] The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnovor practices, or other changes to facilitate reductions in levels of contamination [and shall be approved by the cabinet in accordance with conditions listed in 40 C.F.R. 141.120(b), January 16, 2001, before the altered practices begin].

7. [g] The system shall monitor for total trihalomethanes (TTHM), halonitroso acids, HAAS, and residual disinfectant levels at the same points in the distribution system and at the same time as total coliforms are sampled as established [specified in 401 KAR 8:200].

8. [h] The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnover practices, or other changes to facilitate reductions in levels of contamination [and shall be approved by the cabinet in accordance with conditions listed in 40 C.F.R. 141.120(b), January 16, 2001, before the altered practices begin].

9. [i] A purchasing system shall cooperate in the development of a monitoring plan required from the producing system as established in subsection (2) of this section [under paragraph (b) of the subsection].

10. [j] A purchasing system shall monitor for maximum residual disinfectant levels at the same points in the distribution system[d] and at the same time as total coliforms are sampled as established [specified in 401 KAR 8:200].

Section 3. Maximum Levels. (1) Maximum contaminant level. The maximum contaminant level or MCL for disinfection by-products shall be:

(a) Total trihalomethanes, or TTHM Me-0.060 mg/L;
(b) Halonitroso acids, or HAAS: 0.060 mg/L;
(c) Bromate: 3.00 mg/L; and
(d) Chlorite: zero and zero tenths (0.0 mg/L).

(2) Maximum residual disinfectant level.

(a) The maximum residual disinfectant level, or MRDL, shall be:

1. Chlorine: zero and zero tenths (0.0 mg/L) as Cl2;
2. Chloramines: zero and zero tenths (0.0 mg/L) as Cl2 and
3. Chlorine dioxide: zero and eight tenths (0.8 mg/L) as ClO2.

(b) For chlorine and chloramines, a public water system shall be in compliance with the MRDL if the running annual average of monthly averages of samples taken in the distribution system computed quarterly is less than or equal to the MRDL.

(c) For chloramine disinfection, a public water system shall be in compliance with the MRDL if daily samples are taken at the entrance to the distribution system, and two (2) consecutive daily samples shall not exceed the MRDL.

(d) The MRDL shall be required in the same manner as maximum contaminant levels.

Section 4. Best Available Technology. (1) Disinfection by-products listed. The following shall be the best technology, treatment techniques, or other means available for achieving compliance with the MCLs for disinfection by-products in Section 2 of this administrative regulation:

(a) THM: Enhanced coagulation or enhanced softening or
(b) HAAS: Enhanced coagulation or enhanced softening or
(c) Bromate: Control of ozone treatment process to reduce production of ozone; and
(d) Chlorite: Control of treatment processes to reduce disinfection demand and control of disinfection treatment process to reduce disinfectant levels.

(2) Disinfectant residuals. The best technology, treatment techniques, or other means available for achieving compliance with the MRDL listed in Section 3 of this administrative regulation shall be:

(a) Control of treatment processes to reduce disinfectant demand; and
(b) Control of disinfection treatment processes to reduce disinfectant levels.

Section 5. Analytical Requirements. (1) Except as provided in this section, a system shall sample and analyze according to the procedures in 40 C.F.R. 141.131, January 16, 2001.

(2) A system shall have the samples analyzed by a laboratory that has been certified by the U.S. EPA or the cabinet, pursuant to 40 C.F.R. 141.131(b)(5), June 20, 2005, according to 401 KAR 8:040.

(3) A party approved by the U.S. Environmental Protection Agency or the cabinet shall measure daily chlorite samples at the entrance to the distribution system.

(4) A public water system may measure residual disinfectant
concentrations for chlorine, chloramines, and chlorine dioxide by using a N,N-diethyl-p-phenylenediamine (DPD) colorimetric test kit.

(8) Residual disinfectant concentrations, alkalinity, and total organic carbon or TOC, specific ultraviolet absorbance (including dissolved organic carbon and UVA254), and pH shall be measured by an operator certified pursuant to 401 KAR 8:030, or a person under the direct supervision of a certified operator, or a certified laboratory pursuant to 401 KAR 8:040.

Section 6. Monitoring Requirements. (1) General requirements.
(a) A system shall take all samples during normal operating conditions.
(b) A system may consider multiple wells drawing water from a single aquifer as one (1) treatment plant for determining the minimum number of TTHM and HAAS samples required, as approved pursuant to 40 C.F.R. 142.16(h)(5), April 1, 1989.
(c) Failure to monitor in accordance with the monitoring plan required in subsection (6) of this section shall be a monitoring violation.
(d) Failure to monitor shall be a violation of the entire period covered by the annual average. If compliance is based on a running annual average of monthly or quarterly samples or averages and the system’s failure to monitor makes it impossible to determine compliance with an MCL or MRL.

(2) Monitoring requirements for disinfection by-products.
(a) TTHM and HAAS.

1. Routine monitoring. A system shall monitor at the frequency and locations indicated in the following table:

<table>
<thead>
<tr>
<th>System Type</th>
<th>Minimum monitoring frequency</th>
<th>Sample location in the distribution system</th>
</tr>
</thead>
<tbody>
<tr>
<td>A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves at least 1,000 persons.</td>
<td>Four (4) water samples per quarter per treatment plant.</td>
<td>At least twenty-five (25) percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples shall be taken at locations representing at least average residence time in the distribution system and representing the entire distribution system, taking into account the number of persons served, different sources of water, and different treatment methods.</td>
</tr>
<tr>
<td>A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves from 200 to 999 persons.</td>
<td>One (1) water sample per quarter per treatment plant.</td>
<td>Locations representing maximum residence time.</td>
</tr>
<tr>
<td>A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves fewer than 200 persons.</td>
<td>One (1) sample per year per treatment plant during month of warmest water temperature.</td>
<td>Locations representing maximum residence time. If the sample, or average of annual samples, if more than one (1) sample is taken, exceeds the MCL, the system shall increase monitoring to one (1) sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in subparagraph 4 of this paragraph.</td>
</tr>
<tr>
<td>System using only groundwater not under direct influence of surface water, using chemical disinfectant, and serving at least 10,000 persons.</td>
<td>One (1) water sample per quarter per treatment plant.</td>
<td>Location representing maximum residence time.</td>
</tr>
<tr>
<td>System using only groundwater not under direct influence of surface water, using chemical disinfectant, and serving fewer than 10,000 persons.</td>
<td>One (1) sample per year per treatment plant during month of warmest water temperature.</td>
<td>Locations representing maximum residence time. If the sample, or average of annual samples, if more than one (1) sample is taken, exceeds the MCL, the system shall increase monitoring to one (1) sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in subparagraph 4 of this paragraph.</td>
</tr>
</tbody>
</table>

2. A system may reduce monitoring, except as otherwise provided, in accordance with the following table:

<table>
<thead>
<tr>
<th>Reduced Monitoring Frequency for TTHM and HAAS</th>
<th>If the system type is:</th>
<th>And the system has monitored at least one (1) year and the TTHM annual average ≤ 0.040 mg/L and HAAS annual average ≤ 0.030 mg/L.</th>
</tr>
</thead>
<tbody>
<tr>
<td>System that uses as its source surface water or groundwater under the direct influence of surface water, that serves at least 10,000 persons, and that has a source water annual average TOC level, before treatment, of ≤ 0.0 mg/L.</td>
<td>One (1) sample per treatment plant per quarter at distribution system location reflecting maximum residence time.</td>
<td></td>
</tr>
<tr>
<td>System that uses as its source surface water or groundwater under the direct influence of surface water, that serves from 200 to 999 persons, and that has a source water annual average TOC level, before treatment, of ≤ 4.0 mg/L.</td>
<td>TTHM annual average ≤ 0.040 mg/L and HAAS annual average ≤ 0.030 mg/L.</td>
<td></td>
</tr>
</tbody>
</table>

- 1575 -
3. a. A system on a reduced-monitoring schedule may remain on that reduced schedule if the average of all samples taken in the year, for systems that shall monitor quarterly, or the result of the sample, for systems that shall not monitor more frequently than annually, is not more than 0.60 mg/L and 0.045 mg/L for TTHMs and HAAs, respectively.

b. A system that does not meet those levels shall resume monitoring at the frequency identified in the sample location column in subparagraph 1 of this paragraph in the quarterly immediately following the quarter in which the system exceeds 0.60 mg/L for TTHMs and 0.045 mg/L for HAAs.

c. For a system that uses only groundwater not under the direct influence of surface water and that serves fewer than 10,000 persons, if either the TTHM annual average is ≥ 0.60 mg/L or the HAA5 annual average is ≥ 0.045 mg/L, the system shall go to increased monitoring identified in the sample location column in subparagraph 1 of this paragraph in the quarter immediately following the quarter in which the system exceeds 0.60 mg/L for TTHMs or 0.045 mg/L for HAA5.

d. A system on increased monitoring may return to routine monitoring if the TTHM annual average is ≤ 0.40 mg/L and HAA5 annual average is ≤ 0.030 mg/L.

5. The criteria for reverting a system to routine monitoring shall be as established in 40 C.F.R. 141.132(b)(1)(v)(y), January 4, 2006.

(b) Chlorite. A community or non-transient noncommunity water system using ozone for disinfection or oxidation shall conduct monitoring for chlorite.

1. Routine monitoring.

a. Daily monitoring. A system shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the chlorite MCL, the system shall take additional samples in the distribution system following the day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.

b. Monthly monitoring. A system shall take a three (3) sample set each month in the distribution system. Additional routine sampling shall be conducted in the same manner as three (3) sample sets, at the specified locations. The system may use the results of additional monitoring conducted under subparagraph 2 of this paragraph to meet the requirement for monitoring in this clause. The system shall take one (1) sample at each of the following locations:

(i) Near the first customer;

(ii) At a location representative of average residence time; and

(iii) At a location reflecting maximum residence time in the distribution system.

2. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system shall take three (3) chlorite distribution samples at the following locations:

a. As close to the first customer as possible;

b. In a location representative of average residence time; and

c. As close to the end of the distribution system as possible to reflect maximum residence time in the distribution system.

3. Chlorite monitoring. The system shall perform monitoring at the entrance to the distribution system, required by subparagraph 1a of this paragraph shall not be reduced.

4. Chlorite monitoring in the distribution system. The system shall perform monitoring required by subparagraph 1b of this paragraph may be reduced to one (1) sample per quarter after the first (1) year of monitoring if no individual chlorite sample taken in the distribution system under subparagraph 1b of this paragraph has exceeded the chlorite MCL and the system has not been required to conduct monitoring under subparagraph 3 of the paragraph.

(c) Bromate.

1. Routine monitoring. A community or non-transient noncommunity water system using ozone for disinfection or oxidation shall take one (1) sample per month for each treatment plant in the system that uses ozone.

b. A system shall take the sample monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

2. Reduced monitoring.

a. A system required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromate concentration is less than 0.05 mg/L, based upon representative monthly bromate measurements for one (1) year.

b. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L, based upon representative monthly measurements.

c. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system shall resume routine monitoring required by subparagraph 1 of this paragraph.

3. Monitoring requirements for disinfectant residuals.

(a) Chlorine and chloramines.

1. Routine monitoring. A community or non-transient noncommunity water system that uses chlorine or chloramines shall measure the residual disinfectant level in the distribution system at the same time as total coliforms are sampled, as specified in 401-KAR 8:000.

2. Reduced monitoring. Monitoring shall not be reduced.

(b) Chlorine dioxide.

1. Routine monitoring. A community, non-transient noncommunity, or transient noncommunity water system that uses chlorine dioxide for disinfection or oxidation shall take daily samples at the entrance to the distribution system.

b. For a daily sample that exceeds the MRLs, the system shall take samples in the distribution system the following day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.

2. Additional monitoring.

a. Each day following a routine sample monitoring result that exceeds the MRLs, the system shall take three (3) chlorine dioxide distribution system samples.

b. Chlorine dioxide or chloramines shall be used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system, i.e., no booster chlorination, the system shall take three (3) samples as close to the first customer as possible, at an interval of at least six (6) hours.

c. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one (1) or more disinfection addi-
tion points after the entrance to the distribution system, i.e., booster chlorination, the system shall take one (1) sample at each of the following locations:

(1) Close to the first customer as possible;
(2) In a location representative of average residence time; and
(3) Close to the end of the distribution system as possible, reflecting maximum residence time in the distribution system.

3. Reduced monitoring—Chlorine dioxide-monitoring shall not be reduced.


(a) Routine monitoring.

1. A system shall use as its source surface water or groundwater under the direct influence of surface water that use conventional filtration treatment shall monitor each treatment plant for total organic carbon, or TOC, not later than the point of combined filter effluent turbidity monitoring and representative of the treated water.

2. A system required to monitor under this paragraph shall also monitor for TOC in the source water before any treatment at the same time as monitoring for TOC in the treated water.

3. Three samples of the source water and treated water shall be considered paired samples.

4. When the source water sample is taken, a system shall monitor for alkalinity in the source water before any treatment.

5. A system shall take one (1) paired sample and one (1) source water alkalinity sample per month per plant at a time representative of sample operating conditions and influent water quality.

(b) Reduced monitoring.

1. A system that uses as its source surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than two and zero tenths (2.0) mg/L for two (2) consecutive years, or less than one and zero tenths (1.0) mg/L for one (1) year, may reduce monitoring for both TOC and alkalinity to one (1) paired sample and one (1) source water alkalinity sample per plant per quarter.

2. The system shall revert to routine monitoring in the month following the quarter if the annual average treated water TOC is greater than or equal to two and zero tenths (2.0) mg/L.

(b) Bromide.

(a) System required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L, based upon representative monthly measurements for one (1) year.

(b) The system shall continue bromate monitoring to remain on reduced bromate monitoring.

(c) Monitoring plan.

(a) A system required to monitor under this administrative regulation shall develop and implement a monitoring plan.

(b) The system shall maintain a plan and make it available for inspection by the cabinet and the general public not later than thirty (30) days following the applicable compliance date in Section 2 of the administrative regulation.

(c) A system that uses as its source surface water or groundwater under the direct influence of surface water serving more than 3,200 people shall submit a copy of the monitoring plan to the cabinet not later than the date of the first report required by Section 8 of the administrative regulation.

(d) After review, in accordance with criteria established in 40 C.F.R. 141.102(f), January 4, 2006, the cabinet may require changes specified in 40 C.F.R. 141.102(f), January 4, 2006, in-a-plan element.

(e) The monitoring plan shall include at least the following elements:

1. Specific location and schedule for collecting samples for a parameter included in the administrative regulation;
2. How the system will calculate compliance with MCLs, MCLGs, and treatment techniques; and
3. If providing water to a consecutive system, the sampling plan for THMMS and HAAs shall reflect the entire distribution system.

Section 7. Compliance Requirements. (1) General requirements:

(a) If compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAAs, or bromate, this failure to monitor shall be a monitoring violation for the entire period covered by the annual average.

(b) A sample taken and analyzed under the provisions of this administrative regulation shall be included in determining compliance, even if the number of samples taken is greater than the minimum required.

(c) If during the first year of monitoring under Section 6 of this administrative regulation, an individual quarter average exceeds or equals the running annual average of that system to exceed the MCL, the system shall be out of compliance at the end of that quarter.

(d) Disinfection by-products.

(a) TTHMMS and HAAs.

1. For a system that monitors quarterly, compliance with MGLs in Section 3 of this administrative regulation shall be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of the samples collected by the system as prescribed by Section 6 of this administrative regulation.

2. For a system monitoring less frequently than quarterly, a system shall demonstrate MCL compliance if the average of samples taken that year under the provisions of Section 6(2)(a) of this administrative regulation does not exceed the MCLs listed in Section 3 of this administrative regulation.

(b) If the average of the samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant, and the system shall not be in violation of the MCL until it has completed one (1) year of quarterly monitoring, unless the result of fewer than four (4) quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system shall be in violation at the end of that quarter.

(c) A system required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the samples that triggered the increased monitoring, plus the following three (3) quarters of monitoring.

(d) If the running annual arithmetic average of quarterly averages covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

(e) If a public water system fails to complete four (4) consecutive quarters of monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(b) Bromate.

(a) Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly samples, or for months in which the system takes more than one (1) sample, the average of the samples taken during the month, collected by the system as prescribed by Section 6(2)(c) of this administrative regulation.

(b) If the average of samples covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

(c) If a public water system fails to complete twelve (12) consecutive months monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(c) Chlorine.
to the cabinet pursuant to Section 8 of this administrative regulation.

(3) Disinfectant residuals.
(a) Chlorine and chloramines.
   1. Compliance shall be based on a running monthly arithmetic average of the monthly averages of all samples collected by the system under Section 6(2) of this administrative regulation.
   2. If a system switched between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including all monitoring results of both chlorine and chloramines in calculating compliance.
   3. A report submitted pursuant to Section 8 of this administrative regulation shall clearly indicate which residual disinfectant was analyzed for each sample.
(b) Chlorine dioxide.
   1. Acute violations.
      a. Compliance shall be based on consecutive daily samples collected by the system under Section 6(2) of this administrative regulation.
      b. If a daily sample taken at the entrance to the distribution system exceeds the MDL, the system shall be in violation of the MDL.
      c. If two consecutive samples taken at the entrance to the distribution system exceed the MDL, the system shall be in violation of the MDL.
      e. The system shall take corrective action to lower the level of chlorine dioxide below the MDL, and shall notify the public pursuant to the procedures for acute health risk in Section 8 of the administrative regulation.
   2. Nonacute violations.
      a. Compliance shall be based on consecutive daily samples collected by the system under Section 6(2) of this administrative regulation.
      b. If two (2) consecutive daily samples taken at the entrance to the distribution system exceed the MDL of all distribution systems, the system shall be in violation of the MDL, and the system shall take corrective action to lower the level of chlorine dioxide below the MDL, and shall notify the public pursuant to the procedures for nonacute health risk in Section 8 of the administrative regulation.
      c. If the number of samples taken each month for the last three (3) months:
         1. The location, date, and result of each sample taken during the last quarter;
         2. The location, date, and result of each sample taken during the last quarter;
         3. The arithmetic average of all samples taken in the last quarter;
         4. The arithmetic average of all samples taken in the last quarter.
   3. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
(b) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(c) System monitoring for TTHM and HAAs under the requirements of Section 6(2) of this administrative regulation.
(d) System monitoring for chlorite under the requirements of Section 6(2) of this administrative regulation.
   1. The number of samples taken during the last quarter;
   2. The location, date, and result of each sample taken during the last quarter.
   3. The arithmetic average of all samples taken during the last quarter;
   4. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
   5. If the MCL was violated or not, based on Section 7(2)(c) of this administrative regulation.
2. The monthly arithmetic average of all samples taken in each month for the last twelve (12)-month;
3. The arithmetic average of all monthly averages for the last twelve (12)-month;
4. The MDL was exceeded or not, based on Section 7(3)(a) of this administrative regulation.

(b) A system monitoring for chloroform under the requirements of Section 6(3) of this administrative regulation shall report:
1. The date(s), results, and locations of samples taken during the last quarter;
2. If the MDL was exceeded or not, based on Section 7(3)(b) of this administrative regulation;
3. If the MDL was exceeded or not in any two (2) consecutive daily samples and if the resulting violation was acute or nonacute.

(c) Disinfection by-product precursors and enhanced coagulation or enhanced softening;

(a) A system monitoring monthly or quarterly for TOC under the requirements of Section 6(4) of this administrative regulation and that meet the enhanced coagulation or enhanced softening requirements in Section 6(5)(b) or (c) of this administrative regulation shall report:
1. The number of paired samples taken during the last quarter;
2. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
3. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the associated percent removal;
4. The TTHM and HAAS running annual average shall not be greater than 0.040 mg/L and 0.030 mg/L respectively.

(b) If the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in Section 6(5)(b) or (c) of this administrative regulation the system shall report:
1. The alternative compliance option that the system is using;
2. The number of paired samples taken during the last quarter;
3. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
4. The running annual arithmetic average based on monthly averages, or quarterly samples, of source water TOC for a system meeting the criterion in Section 9(1)(b) of this administrative regulation or of treated water TOC for a system meeting the criterion in Section 9(1)(b) of this administrative regulation;
5. The running annual arithmetic average based on monthly averages, or quarterly samples, of source water TOC for a system meeting the criterion in Section 9(1)(b) of this administrative regulation or of treated water TOC for a system meeting the criterion in Section 9(1)(b) of this administrative regulation.

(c) The running annual average of source water alkalinity for a system meeting the criterion in Section 9(1)(b) or (c) of this administrative regulation and of treated water alkalinity for a system meeting the criterion in Section 9(1)(c) of this administrative regulation;

7. The running annual average for both TTHM and HAAS for a system meeting the criterion in Section 9(1)(b) or (c) of this administrative regulation;
8. The running annual average of the amount of magnesium hardness removal, as CaCO₃, in mg/L, for a system meeting the criterion in Section 9(1)(c) of this administrative regulation; and
9. If the system is in compliance or not with the particular alternative compliance criterion in Section 9(1)(b) or (c) of this administrative regulation.

Section 6. Treatment Technique for Control of Disinfection By-product Precursors (1) Applicability;

(a) A system that uses its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal level specified in subsection (2) of this section unless the system meets

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Step 1: Required Removal Percent of TOC by Enhanced Coagulation and Enhanced Softening for a System that Uses its Source Surfaced-Water or Groundwater Under the Direct Influence of Surface Water Using Conventional Treatment

<table>
<thead>
<tr>
<th>Source water TOC, mg/L</th>
<th>Source water alkalinity, mg/L as CaCO₃</th>
</tr>
</thead>
<tbody>
<tr>
<td>120 or less</td>
<td>10 or less</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>0-60</th>
<th>61-120</th>
<th>121-240</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.0 ≤ TOC ≤ 4.0</td>
<td>36.0%</td>
<td>26.0%</td>
</tr>
<tr>
<td>4.0 ≤ TOC ≤ 8.0</td>
<td>45.0%</td>
<td>36.0%</td>
</tr>
<tr>
<td>TOC &gt; 8.0</td>
<td>60.0%</td>
<td>45.0%</td>
</tr>
</tbody>
</table>

A system meeting a condition in subsection (1)(b) of this section need not operate with enhanced coagulation.

A softening system meeting an alternative-compliance criterion in subsection (3) of this section need not operate with enhanced softening.

A system practicing softening shall meet the TOC removal requirements in this column.

(e) A system that uses an in-source surface water or groundwater under the direct influence of surface water and that uses conventional treatment that is not able to achieve the Step 1 TOC removals required by paragraph (d) of this subsection due to water-quality parameters or operational constraints shall apply to the cabinet within three (3) months of failure to achieve the TOC removals required by paragraph (b) of this subsection, for approval of Step 2 removal requirements submitted by the system.

2. The cabinet may determine, pursuant to 40 C.F.R. 141.135(b)(3), January 4, 2006, that Step 2 requirements shall be retroactive for the purpose of demonstrating compliance.

5. Until the cabinet approves the Step 2 requirements, in accordance with the timeframe described in 40 C.F.R. 141.135(b)(3), January 4, 2006, the system shall meet the Step 1 TOC removals contained in paragraph (b) of this subsection.

(d) Step 2 requirements.

1. An application to the cabinet by an enhanced coagulation system for approval of Step 2 requirements under paragraph (e) of this subsection shall include, as a minimum, the results of bench- or pilot-scale testing conducted under subparagraph (a) or (b) of this paragraph.

2. The submitted bench- or pilot-scale testing shall be used to determine the alternate enhanced coagulation load.

3. Aluminate enhanced coagulation load shall be the coagulation required at a coagulant dose and pH as determined by the method described in this subparagraph at a coagulation load of ten (10) mg/L of alum, or equivalent amount of iron, saline waste, results in a TOC removal of less than or equal to three tenths (0.3) mg/L.

4. The percent removal of TOC at the point of the TOC removal versus coagulant dose curve then shall be the minimum TOC removal required for the system.

5. Upon approval by the cabinet in accordance with approval criteria established in 40 C.F.R. 141.135(b)(4)(i), January 4, 2006, this minimum requirement shall supersede the minimum TOC removal required by the cabinet in paragraph (b) of this section.

(iii) This requirement shall be effective until the cabinet approves a new value based on the results of a new bench- and pilot-scale test.

(iv) Failure to achieve the alternate minimum TOC removal level set by the cabinet shall be a violation of this administrative regulation.

(b) Bench- or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding ten (10) mg/L increments of alum, or equivalent amounts of iron, saline waste, until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

<table>
<thead>
<tr>
<th>Enhanced Coagulation Step 2 Target pH</th>
<th>Alkalinity, mg/L measured as CaCO₃</th>
<th>Target pH</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 60</td>
<td>5.5</td>
<td>6.3</td>
</tr>
<tr>
<td>61 - 120</td>
<td>6.3</td>
<td>7.0</td>
</tr>
<tr>
<td>121 - 240</td>
<td>7.0</td>
<td>7.5</td>
</tr>
<tr>
<td>≥ 240</td>
<td>7.5</td>
<td>8.0</td>
</tr>
</tbody>
</table>

(a) For waters with alkalinity of less than sixty (60) mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below five and five tenths (5.5) before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between five and five tenths (5.5) and five and seven tenths (5.7) in samples until the TOC removal of three tenths (0.3) mg/L per ten (10) mg/L alum added, or equivalent addition of iron coagulant, is reached-

(c) The system may operate at a coagulant dose or pH necessary, consistent with other administrative regulations in 401 KAR 8:010 to 401 KAR 8:700, to achieve the minimum TOC percent removal approved under paragraph (d) of this subsection.

(d) The TOC removal is consistently less than three tenths (0.3) mg/L of TOC per ten (10) mg/L of incremental alum dose or incremental equivalent addition of iron coagulant, the water is deemed to contain TOC not amenable to enhanced coagulation.

(e) The system may then apply to the cabinet for a waiver of enhanced coagulation requirements.

(f) Compliance calculations.

(g) A system that uses an in-source surface water or groundwater under the direct influence of surface water other than that identified in subsection (1) of this section, shall comply with requirements in subsection (2)(b) or (c) of this section.

2. A system shall calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

- Determine as actual monthly TOC percent removal, which shall be calculated as:

\[ \text{4} \times \left( \text{treated water TOC / source water TOC} \right) \times 100 \]

- Determine the required monthly TOC percent removal from either the table in subsection (2)(b) of this section or from subsection (2)(c) of this section.

- Divide the value in subparagraph 1 of this paragraph by the value in subparagraph 2 of this paragraph.

- Add together the results of subparagraphs 2 of this paragraph for the past twelve (12) months and divide by twelve (12).

- If the value calculated in subparagraph 4 of this paragraph is less than 1.00, the system shall not be in compliance with the TOC percent removal requirements.

(h) A system may use the provisions in subparagraph 1 to 5 of this paragraph instead of the calculations in paragraphs (a) through (e) of this subsection to determine compliance with TOC percent removal requirements.

(i) In a month that the system's treated or source water TOC level, measured according to 40 C.F.R. 141.131(d)(3), January 4, 2006, is less than and two zero tenths (2.0) mg/L, the system may assign a monthly value of one and zero tenths (1.0) instead of the value calculated in paragraph (a) or (b) of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection.

(j) In a month that a system's treated source water SUVA3, before treatment and measured according to 40 C.F.R. 141.131(d)(4), January 16, 2001, is less than or equal to two and zero tenths (2.0) L/mg·m, the system may assign a monthly value of one and zero tenths (1.0) instead of the value calculated in paragraph (a) or (b) of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection.

(k) In a month that the system's finished water SUVA3, measured according to 40 C.F.R. 141.131(d)(4), January 16, 2001, is less than or equal to two and zero tenths (2.0) L/mg·m, the system may assign a monthly value of one and zero tenths (1.0) instead of the value calculated in paragraph (a) or (b) of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection.

(l) In a month that the system's enhanced softening lowers alkalinity below sixty (60) mg/L as CaCO₃, the system may assign a monthly value of one and zero tenths (1.0) instead of the value calculated in paragraph (a) or (b) of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection.

(m) A system that uses an in-source surface water or groundwater under the direct influence of surface water and that uses conventional treatment may also comply with the requirements of this section by meeting the criteria in subsection (1)(b) or (c) of this section.

(n) Treatment-technique requirements for disinfection by...
products (DBP) precursors. For a system that uses surface water or groundwater as its source and that uses conventional treatment, enhanced coagulation or enhanced softening shall be a treatment technique to control the level of disinfection by-product precursors in a drinking water treatment or drinking water distribution system.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held for December 22, 2008 at 10 a.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzeszky, Director

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation provides analytical techniques, monitoring requirements, and maximum contaminant levels for disinfection by-products, including the adoption of the Stage 2 Disinfection Byproduct regulation. It also identifies technologies to reduce such byproducts if necessary.
   (b) The necessity of this administrative regulation: The control of disinfection by-products is necessary to protect public health.
   (c) How this administrative regulation conforms to the content of the statutes that authorize the rule (KRS 225.010-110) and KRS 225.060(1) that authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-25), requires the establishment of national primary drinking water regulations. 40 C.F.R. Subpart L, Sections 141.120 through 141.135, Subpart U, Sections 141.600 through 141.605, Subpart V, Sections 141.620 through 141.629, 141.64, 141.65, July 1, 2007 contain the national primary drinking water regulations for disinfection by-products.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The control of disinfection by-products is essential to assure the purity of drinking water to protect public health.
   (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 provides federal citations and strikes federal language adopted in the body of a state regulation. This amendment also is adopting the Stage 2 Disinfection Byproduct regulation, including requirements for an initial distribution system evaluation, through the use of federal citation.
      (b) The necessity of the amendment to this administrative regulation: The Stage 2 Disinfection Byproduct regulation must be adopted for the state of Kentucky to maintain primacy for enforcing the requirements of the Safe Drinking Water Act. The cabinet believes that using federal citations to adopt this regulation, as well as converting earlier disinfection by-product regulatory requirements to citations, will allow future federal changes in regulatory requirements to be more easily adopted.
   (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides federal citations for the Stage 2 Disinfection Byproduct regulation and adopts current disinfection by-product requirements through the use of federal citation. These citations will make the administrative regulation conform exactly to federal requirements for disinfection by-products.
   (d) How the amendment will assist in the effective administration of the statutes: The adoption of the Stage 2 Disinfection Byproduct regulation will allow the cabinet to obtain primacy for the enforcement of these requirements. The use of federal citations instead of recreating federal language in state regulation will allow future federal changes in regulatory requirements to be more easily adopted.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 491 public water systems.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendments of the administrative regulation: The administrative regulation provide federal citations and strike federal language in the body of the state regulation. For these portions of the amendments, the substantive requirements of the regulated entities are unchanged. The Stage 2 Disinfection Byproduct regulation will require community and nontransient noncommunity water systems that use disinfection to do an initial distribution system study to determine future monitoring requirements under the Stage 2 Disinfection Byproduct regulation. The results of this study will determine locations for doing monitoring for disinfection by-products. These systems, along with the transient noncommunity systems, will then need to comply with maximum contaminant levels established on a location running annual average. Systems with violations may have to add additional treatment to comply with these requirements.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with the portions of this regulation (Stage 1 Disinfection Byproducts rule) that are currently in effect remain unchanged. The United States Environmental Protection Agency estimates the national costs of the Stage 2 Disinfection Byproduct regulation to be $37 million dollars. For Kentucky this will result in an approximate cost of $50,000 annually, based on an average cost of $1,050 per system, with 437 systems being affected. However, the costs to individual systems will depend on their population served, source water, complexity of the initial distribution system evaluation, and whether the system is able to maintain compliance with existing treatment. Monitoring costs for the initial distribution system evaluation and compliance could range from $4,000 for a system serving over 50,000 in population to $3,360 for a system serving less than 10,000 in population. If additional treatment is needed, the cost will vary by system size and the complexity of the treatment required. EPA estimates that 11% of the systems most likely to require additional treatment will be those on surface water sources - for Kentucky this translates to 35 out of 316 systems. The additional treatment can include changes in disinfection, additional treatment chemicals such as carbon or advanced filtration processes. The increased costs would exist whether this administrative regulation is adopted or not, since the systems must comply for the U.S. Environmental Protection Agency rules if the cabinet does not receive primary enforcement responsibility.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The customers of these entities will enjoy a better, higher quality product. The United States Environmental Protection Agency estimates that a significant number of lymphoma, bladder cancer, and bronchitis occurrences will be avoided in people drinking water from public water systems as a result of the adoption of the Stage 2 Disinfection Byproduct regulat-
tion. Public water systems will benefit from working with the cabinet to meet these requirements as opposed to having to answer to the U.S. Environmental Protection Agency if the cabinet fails to obtain primary enforcement responsibility for these rules.

(5) Provide an estimate of how much it will cost the administrative body to implement this regulation. (b) Initially: The United States Environmental Protection Agency estimates average state primary agency costs to be about $138,000 annually. Initially, Kentucky took on the early implementation activities associated with the new Stage 2 rule that included water system training, initial distribution system evaluation development and tracking and initial compliance activities. With the increased work load, Kentucky's estimated cost approaches $200,000 annually since rule promulgation in January 2006. The cabinet does not anticipate requesting additional money for this regulation.

(b) On a continuing basis: The United States Environmental Protection Agency estimates average state primary agency costs to be about $221,000. Although individual state costs will vary, Kentucky anticipates an annual cost to mirror the EPA estimate. The cabinet does not anticipate requesting additional money for this 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 for the drinking water program is a combination of federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 will not be necessary.

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

(9) TIERING: Is tiering applied? Yes. This regulation differs in requirements for community water systems, non-community water systems, and transient non-community water 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 What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 2. This administrative regulation applies to public water systems. Public water systems are oftentimes run by city governments or organized under county governments. Other districts may, in some cases, have a water system.

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(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 42 U.S.C. Chapter 6A, Subchapter XI, the Safe Drinking Water Act, and 40 C.F.R. 141 Subpart L, Sections 141.130 through 141.135, Subpart U, Sections 141.600 through 141.605, Subpart V, Sections 141.620 through 141.629, 141.64, and 141.65.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for the first year. (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? For the first year, costs to implement this administrative regulation will vary with each public water system, depending upon population size, source water, and extent of the initial distribution system evaluation (IDSE). All systems, including purchase of new systems, will be required to conduct the IDSE and will incur costs in addition to current SDWA monitoring at a cost of approximately $210 per sample. The average Kentucky water system serving between 10,000 and 50,000 population will incur approximately $10,000 in additional monitoring. Large systems could see first year costs as high as $30,000 and smaller groundwater systems as low as $210. These costs would only be incurred even without the amendment to this administrative regulation because the systems would be required to comply by the U.S. Environmental Protection Agency should the cabinet not obtain primary enforcement responsibility.

(d) How much will it cost to administer this program for subsequent years? Many of the costs incurred by a public water system will be realized in the first year of implementation of this administrative regulation for system studies and later for the installation of additional treatment. Costs for monitoring and reporting and treatment will continue. Groundwater systems may be able to comply with relatively low costs and may see a decrease in costs because groundwater does not contain high amounts of disinfection by-products. Surface water systems, however, could see significant costs as more monitoring at more frequent intervals will be required. It may be that systems for the purchase water from other systems may be required to improve distribution system operations and maintenance. See 4(b) in the Regulatory Impact Analysis for more details. These costs would be incurred even without the amendment to this administrative regulation because the systems would be required to comply by the U.S. Environmental Protection Agency should the cabinet not obtain primary enforcement responsibility.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation. The Stage 2 Disinfection Byproduct regulation is expected to cost community and non-transient non-community public water systems a significant amount for system studies, monitoring, reporting, and in some cases additional treatment. However, as this new regulation is population-based, there is even equity in the costs as the water systems with a larger customer base and on sources more prone to disinfection by-product formation (primarily surface water) will monitor more frequently and at more sites. Systems serving smaller populations and those on groundwater sources could actually see a decrease in costs as their monitoring frequency and number will decrease. It is anticipated that little capital improvement will be necessary at Kentucky's 163 groundwater systems. Any additional costs are expected to be recovered through rates and tariffs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300j through 300n-26), and 40 C.F.R. 141 Subpart L, Sections 141.130 through 141.135, Subpart U, Sections 141.600 through 141.605, Subpart V, Sections 141.620 through 141.629, 141.64, and 141.65.

2. State compliance standards. KRS 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300j through 300n-26), and 40 C.F.R. 141, Sections 141.130 through 141.135, Sections 141.600 through 141.605, Sections 141.620 through 141.629, 141.64, and 141.65 establish the frequency, monitoring requirements and maximum contaminant levels for disinfection by-products.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or
additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:550. Radionuclides.

RELATES TO: KRS 224.10-100(39), 224.10-110, 40 C.F.R. 141.25, 141.26, 141.55, 141.66, EQ. 2008-507 and 2008-531
STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.25, 141.26, 141.55, 141.66, 42 U.S.C. 3007 through 3007-28 [Chapter 6A-Subchapter-XII]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) authorizes the [Environmental and Public Protection] cabinet to enforce the statutes and administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EQ. 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the requirements for sampling and testing procedures for radionuclides and establishes maximum contaminant levels for safe drinking water.

Section 1. A community water system shall comply with the requirements for monitoring and testing for radionuclides in accordance with 40 C.F.R. 141.25, 141.26, 141.55, and 141.66, effective July 1, 2007. (Applicability. This administrative regulation shall apply to all community water systems:
(1) A community water system shall comply with the MCLs for combined radium-226 and radium-228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium.
(2) Compliance shall be determined in accordance with the requirements of Sections 3 and 4 of the administrative regulation.
(3) Compliance shall be determined in accordance with the reporting requirements of 401 KAR 8.070 and 8.076.

Section 2. MCL. Best Available Technology. MCLG, and Small System Compliance Technology. (1) MCLG. The MCLG for radionuclides shall be:
(a) The MCL for combined radium-226 and radium-228, shall be five (5) pCi/L.
(b) The combined value shall be determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.
(c) Gross alpha particle activity (including radium-226, but excluding radon and uranium) shall be fifteen (15) pCi/L.
(d) The average annual concentration of beta particle and photon radioactivity from mammalian radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four (4) millirem/year, or more/year, under the condition of the operation of the water system.

4. Except for the radionuclides listed in Table A, the concentration of mammalian radionuclides causing four (4) millirem/year total body or organ dose equivalents shall be calculated on the basis of a two (2) liter-per-day drinking water intake, using the 188-hour data gathered in Maximum permissible Body Burden and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, U.S. Department of Commerce, National Bureau of Standards, Handbook 69, and Addendum 1.

2a. If two (2) or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four (4) millirem/year.

Table A

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Critical Organ</th>
<th>Producible per liter (pCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tritium</td>
<td>Total body</td>
<td>20,000</td>
</tr>
</tbody>
</table>

Footnotes:

2. With point of use technology, a treatment device installed at a single tap for the purpose of reducing contaminants in drinking water at that one (1) tap. POUs are typically installed at the kitchen tap.
3. Small system compliance technology for radionuclides.
4. The regeneration solution contains high concentrations of the contaminant ions. Disposal options shall be carefully considered.
5. If POU device is used for compliance, the water system shall provide a program for long-term operation, maintenance, and monitoring to ensure proper performance.
6. Rejected water disposal options shall be carefully considered before choosing this technology. See other RO limitations described.
VOLUME 35, NUMBER 6 – DECEMBER 1, 2008

Section 3. Detection Limits and Analytical Methods. (1) Detection limit. To monitor the radionuclide concentration in drinking water, the required sensitivity of the radionuclide shall be determined by the detection limit. The detection limit shall be that concentration that is able to be counted with a precision of plus or minus 100 percent at the ninety-five percent confidence level, or 1.66 standard deviations of the net counting rate of the sample.

(a) For compliance with the MCLs in Section 2(f)(a) and (c) of the administrative regulation, the detection limits shall not exceed the following concentrations:

- Gross alpha particle activity, three (3) pCi/L;
- Radium-226: one (1) pCi/L;
- Radium-228: one (1) pCi/L; and
- Uranium: one (1) µg/L.

(b) For determination compliance with the MCLs for manmade beta particle and photon emitters in Section 2(f)(b) of this administrative regulation, the detection limit shall not exceed the following concentrations:

- Tritium: 1,000 pCi/L;
- Strontium-90: ten (10) pCi/L;
- Iodine-131: one (1) pCi/L;
- Cesium-137: ten (10) pCi/L;
- Gross beta: four (4) pCi/L; and
- Other radionuclides: one-tenth (0.1) of the applicable limit.

(c) For determination compliance with the MCLs in Section 2 of this administrative regulation, the data shall be averaged, and the average shall be rounded to the same number of significant figures as the MCL for that contaminant.

(d) The cabinet may determine compliance or initiate enforcement action based upon analytical results or other information compiled by their sanctioned representatives and agencies, specified in accordance with the Federal Surface Water Treatment Rule, 40 C.F.R. 141.6(b), footnote 6, December 7, 2000, December 31, 1990.

(e) The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

(f) Removal efficiency may vary depending on water quality.

(g) This technology may be very limited in application to a small system. Since the process requires state mixing, detection devices, and filtration, it is most applicable to a system with sufficient high sulfato levels that already have a suitable filtration treatment train in place.

(h) This technology is more applicable to a small system that already has filtration in place.

(i) The various chemical requirements for regeneration and pH adjustment may be too difficult for a small system without an adequately trained operator.

(j) Assumes modification to a coagulation or filtration process already in place.

(2) Analytical methods. The analytical methods specified in 40 C.F.R. 141.25(a) and (b), July 1, 2006, shall be used to determine compliance with Section 2 of this administrative regulation.


(a) A community water system shall conduct initial monitoring to determine compliance with Section 2 of this administrative regulation by December 31, 2007. For the purposes of monitoring for these contaminates, the detection limit shall be as specified in Section 3 of this administrative regulation.

(b) Existing systems or sources.

- An existing community water system that uses groundwater, surface water, or both, shall sample at every entry point to the distribution system that is representative of all sources being used under normal operating conditions, called the "sampling point." A system shall take one sample at each of the same sampling points where one or more radionuclides or radionuclides are above the MCL, or where the monitoring point is in accordance with subparagraph 2 of this paragraph.

- New systems or sources.

- A new community water system or community water system that uses a new source of water shall begin conducting initial monitoring for the new source within the first quarter after initiating use of the source.

- A system shall conduct more frequent monitoring based on possible contamination or if changes in the distribution system or treatment process occur that may increase the concentration of radionuclide in finished water.

(b) Initial monitoring. A system shall conduct initial monitoring for gross alpha-particle activity, radium-226, radium-228, and uranium as follows:

- A system without acceptable historical data as specified in subparagraph 2 of this paragraph shall collect four (4) consecutive quarterly samples at each sampling point before December 31, 2007;

- Grandfathered data. The cabinet shall review historical monitoring data collected at a sampling point to satisfy the initial monitoring for that sampling point in accordance with 40 C.F.R. 141.25(a)(3)(ii). June 29, 2004, in the following situations:

(a) A community water system that has only one (1) entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 31, 2003;

(b) A community water system that has multiple entry points and that has applicable historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 31, 2003; and

(i) A community water system with applicable historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 31, 2003, if the historical data demonstrates pursuant to 40 C.F.R. 141.25(a)(3)(ii). June 29, 2004, that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels at entry points.

(ii) The cabinet shall make a written finding indicating how the data conform to these requirements.

3. The cabinet may waive the initial monitoring, pursuant to 40 C.F.R. 141.25(a)(3)(ii). June 29, 2004 if requested, for a sampling point if the results of the samples from the previous two (2) quarters are below the detection limit.

4. If the average of the initial monitoring results for a sampling point above the MCL, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are at or below the MCL, unless the system enters into another schedule as a part of a formal agreed order with the cabinet.
system may request the cabinet to reduce the frequency of monitoring from once every three (3) years to once every six (6) years or nine (9) years, under the following conditions:

1. If the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one-half (1/2) the MCL, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every nine (9) years;

2. a. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one-half (1/2) the MCL, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every nine (9) years;

   b. For combined radium-226 and radium-228, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every nine (9) years;

3. a. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above one-half (1/2) but at or below the MCL, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every three (3) years;

   b. For combined radium-226 and radium-228, the analytical results shall be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above one-half (1/2) but at or below the MCL, the system shall collect and analyze for at least one (1) sample at that sampling point every three (3) years;

4. A system shall use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods. For example, if a system’s sampling point is on a nine (9) year monitoring period, and the sample result is above one-half (1/2) the MCL, then the next monitoring period for that sampling point shall be three (3) years;

5. If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are below the MCL, unless the system requests into another schedule as part of a formal agreed order with the cabinet.

(d) Composing

1. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may compose up to four (4) consecutive quarterly samples from a single entry point if analyses are done within a year of the first sample.

2. The cabinet shall treat analytical results from the composited samples as the average analytical result to determine compliance with the MCLs and the future monitoring frequency.

3. If the analytical result from the composited sample is greater than one-half (1/2) the MCL, the cabinet shall direct the system to take additional quarterly samples before sampling under a reduced monitoring schedule.

(e) 1. A gross alpha particle activity measurement may be substituted for the required radium-226 measurement if the measured gross alpha particle activity does not exceed five (5) pCi/L. A gross alpha particle activity measurement may be substituted for the required uranium measurement if the measured gross alpha particle activity does not exceed fifteen (15) pCi/L.

2. The gross alpha particle activity measurement shall have a confidence interval of ninety-five (95) percent, or 1.65 standard deviations of the net-count rate of the sample, for radium-226 and uranium.

4. If a system uses a gross alpha particle activity measurement in place of a radium-226 measurement, the gross alpha particle activity determination shall be used to determine the future monitoring frequency for radium-226 and uranium.

5. If the gross alpha particle activity result is less than the detection limit, one half (1/2) the detection limit shall be used to determine compliance and the future monitoring frequency.

(2) Particle and photon radioactivity

To determine compliance with the MCLs in Section 2 of this administrative regulation and 40 C.F.R. 141.60(c), July 1, 2005, for beta particle and photon radioactivity, a system shall monitor at the frequency described below:

(a) Community water system, surface or groundwater, designated by the cabinet as vulnerable shall sample for beta-particle and photon radioactivity at a composite quarterly sample of four (4) gross alpha particle activity samples and four (4) beta particle and photon radioactivity samples for tritium and strontium-90 at each entry point to the distribution system, called the sampling point, beginning within one (1) quarter after being notified by the cabinet. A system already designated by the cabinet shall continue to sample until the cabinet reviews and either reaffirms or removes the designation.

1. a. If the gross beta-particle activity or the naturally occurring potassium-40 beta-particle activity at a sampling point has a running annual average, computed quarterly, less than or equal to the screening level of fifty (50) pCi/L, the system may reduce the frequency of monitoring at that sampling point to once every three (3) years;

b. A system shall collect all samples required in paragraph (b) for a section during the reduced monitoring periods.

2. a. For a system in the vicinity of a nuclear facility, the system may use environmental surveillance data collected by the nuclear facility instead of monitoring at the system’s entry point, if the data are applicable to the particular water system, pursuant to 40 C.F.R. 141.26(b)(1)(iv), June 29, 2004.

b. If there is a release from a nuclear facility, a system that is using surveillance data shall begin monitoring at the system’s entry point in accordance with this paragraph (b).

3. A community water system, either surface or groundwater, designated by the cabinet as using waters contaminated by effluents from a nuclear facility shall sample for beta-particle and photon radioactivity. The system shall collect quarterly samples for beta-emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, called a sampling point, beginning within one (1) quarter after being notified by the cabinet. A system already designated by the cabinet as a systems using waters contaminated by effluents from a nuclear facility shall continue to sample until the cabinet reviews and either reaffirms or removes the designation.

1. Quarterly monitoring for gross beta-particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples.

2. For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. More frequent monitoring shall be conducted if iodine-131 is identified in the finished water.

3. Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four (4) consecutive quarterly samples of four (4) gross beta-particle activity samples.

4. If the gross beta-particle activity and the naturally occurring potassium-40 beta-particle activity at a sampling point has a running annual average, computed quarterly, less than or equal to the screening level of fifteen (15) pCi/L, a reduction in the frequency of monitoring at that sampling point shall be determined by the cabinet in accordance with 40 C.F.R. 141.26(b)(1)(iv), June 29, 2004.

5. System shall collect the same type of samples required in this paragraph during the reduced monitoring period.

6. a. For a system in the vicinity of a nuclear facility, the system may use environmental surveillance data collected by the nuclear facility instead of monitoring at the system’s entry point, if the cabinet determines that the data are applicable to the particular water system in accordance with 40 C.F.R. 141.26(b)(1)(iv), June 29, 2004.

b. If there is a release from the nuclear facility, a system that is using surveillance data shall begin monitoring at the system’s entry point in accordance with this paragraph.

4. System designated by the cabinet to monitor for beta-particle and photon radioactivity shall not apply the cabinet for a waiver from the monitoring frequencies specified in paragraph (a) or (b) of this subsection.

5. A system may analyze for naturally occurring potassium-40 beta-particle activity from the same or equivalent sample used for the gross beta-particle activity analysis.

6. A system may subtract the potassium-40 beta-particle activity...
ty value from the total gross beta particle activity value to determine if the screening level is exceeded.

3. The potassium-40 beta particle activity shall be calculated by multiplying elemental potassium concentrations in mg/L by a factor of 0.82.

4. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the applicable screening level, an analysis of the sample shall be performed to identify the major radioactive constituents present in the sample.

5. The applicable dose shall be calculated and summed to determine compliance with 40 C.F.R. 141.66(d)(4), July 1, 2006, using the formula in 40 C.F.R. 141.66(d)(4), July 1, 2006. Doses shall also be calculated and combined for measured levels of uranium, thorium, and potassium to determine compliance, and

(f) A system shall monitor monthly at the sampling point that exceeds the MCL in 40 C.F.R. 141.66(d), July 1, 2006, beginning the month after the exceedance occurs.

4. A system shall continue monitoring until the system has established, by a rolling average of three (3) monthly samples, that the MCL is being met.

5. A system that establishes that the MCL is being met shall return to quarterly monitoring until it meets the requirements set forth in paragraph (a) or (b) of this subsection.

6. General monitoring and compliance requirements. (a) The cabinet may require more frequent monitoring than specified in this section or may require confirmation samples. The results of the initial and confirmation samples pursuant to 40 C.F.R. 141.66(e), June 20, 2004 shall be averaged in determining compliance.

(b) Each public water system shall monitor at the required frequency in accordance with the administrative regulations.

(c) Compliance. Compliance with this section shall be determined based on the analytical result obtained at each sampling point. If one (+) sampling point is in violation of the MCL, the system shall be in violation of the MCL.

4. For a system that monitors more than once per year, compliance with the MCL shall be determined by a running seasonal average at each sampling point.

5. If the average of any sampling point is greater than the MCL, then the system shall be out of compliance with the MCL.

6. A system monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system shall be out of compliance with the MCL immediately.

7. A system shall include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

8. If a system does not collect all required samples when compliance is based on a running seasonal average of quarterly samples, compliance shall be based on the running average of the actual number of samples collected, not the required number of samples.

9. If a sample result is less than the detection limit, zero shall be used to calculate the seasonal average unless the gross alpha particle activity is being used instead of radium-226 or uranium.

10. If the gross alpha particle activity result is less than the detection limit, one-half of the detection limit shall be used to calculate the seasonal average.

11. The system shall review results of obvious sampling errors or analytical errors in accordance with 40 C.F.R. 141.26(e)(4), June 29, 2004.

12. If a MCL for radioactivity set forth in Section 2 of this administrative regulation is exceeded, the operator of a community water system shall give notice to the cabinet pursuant to 401-KAR 6-020 and to the public as required by KAR 6-070.


2. The material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, Drinking Water Branch, 14, Reily Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:00 p.m., or through www.water.ky.gov/dw.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2008. Five working days prior to the hearing, or 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 31, 2008. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grublesky, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires public water systems to monitor for radionuclides in accordance with 40 C.F.R. 141.25, 141.26, 141.55, and 141.56.

(b) The necessity of this administrative regulation: The control of radionuclides is necessary to protect public health.

(c) How this administrative regulation complies with the requirements of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. 300f through 300i) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.25, 141.26, 141.55, and 141.56 provide analytical and operating requirements and maximum contaminant levels for radionuclides.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The control of radionuclides in drinking water is essential to assure water purity and protect public health.

(2) If this is an amendment to an existing administrative regulation:
(a) How the amendment will change the existing administrative regulation: This administrative regulation adopts federal citations and strikes federal language adopted in the body of a state regulation. The substantive requirements of the existing regulation remain unchanged.

(b) The necessity of the amendment to this administrative regulation: The cabinet believes that this will allow future federal changes in regulatory requirements to be more easily adopted.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 40 C.F.R. 141.25, 141.26, 141.55, and 141.66 provide analytical techniques, monitoring requirements and maximum contaminant levels for radionuclides. This administrative regulation adopts federal citations and strikes federal language adopted in the body of a state regulation. These citations will make the regulation conform exactly to federal requirements for radionuclides.
(d) How the amendment will assist in the effective administration of the statutes: The cabinet believes that this proposed amendment will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 491 public water systems.

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

(a) List the actions that each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment: The amendments to this regulation adopt federal citations instead of reproducing the narrative of federal language in the body of the state regulation. The substantive requirements of the regulated entities are unchanged in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The costs of complying with this regulation remain unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public and semipublic water systems will benefit by clearly seeing the requirements of this administrative regulation are no more stringent than the federal requirements.

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

(a) Initially: The requirements of this regulation remain unchanged from regulations currently in place. Costs of Implementation will remain the same.

(b) On a continuing basis: The requirements of this regulation remain unchanged from regulations currently in place. Costs of implementation will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding for the drinking water program is a combination of state general funds and federal funds provided to administer the requirements of the Safe Drinking Water Act.

(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 will not be necessary to implement this proposed amendment.

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

(9) TIERING: Is tiering applied? Yes. This regulation differs in requirements for community water systems, non-community water systems, and transient non-community water 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 What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

2. This regulation applies to public water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26) and 40 C.F.R. 141.25, 141.26, 141.55, and 141.66 establish analytical techniques, monitoring requirements, and maximum contaminant levels for radionuclides. KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for 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 subsequent years? This administrative regulation will not generate any revenue for local governments in subsequent years.

(b) How much will it cost to administer this program for the first year? The proposed amendments to this administrative regulation are a change in format; they will not impose any additional cost for the first year.

(c) How much will it cost to administer this program for subsequent years? The proposed amendments to this administrative regulation are a change in format; they will not impose 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: FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Chapter 8A, Subchapter XII, the Safe Drinking Water Act, and 40 C.F.R. 141.25, 141.26, 141.55, and 141.66

2. State compliance standards. KRS 224.10-100(25) and 224.10-110

3. Minimum or uniform standards contained in the federal mandate. The Safe Drinking Water Act (42 U.S.C. 300f through 300j-26) and 40 C.F.R. 141.25, 141.26, 141.55, and 141.66 establish analytical techniques, monitoring requirements, and maximum contaminant levels for radionuclides.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department for Workforce Investment
Office of Employment and Training
(Amendment)

787 KAR 1:090. Unemployed Worker’s Reporting Requirements

RELATES TO: KRS 341.350, 341.380, 342.360, 341.370

STATUTORY AUTHORITY: KRS 151B.020, 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group
classification code A or B based upon his reemployment prospects.
(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.
(b) Group B shall include any worker who is:
1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;
2. Unemployed because of a labor dispute in the establishment where he has been employed;
or
3. A member of a union which shall be responsible for securing future employment.
(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.
(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete:
(a) An internet claim registration through the Web site provided by the agency for that purpose at https://uiclaims.des.ky.gov/ebenefit/;
(b) A telephone claim registration through the call center provided by the agency for that purpose; or
(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.
(2) If any issues regarding the unemployed worker’s eligibility as provided by KRS 341.350 or a potently disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:
(a) Providing picture identification and valid proof of the worker’s Social Security number from the Social Security Administration; and
(b) Presenting all facts in support of the application.
(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.
(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames provided in subsection (2) of this section.
(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits;
(b) Except as provided in paragraph (d) of this subsection, for the first two weeks of benefits claimed following the effective date of an initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period, except that a worker shall not claim benefits until thirteenth (13) days after the day on which the worker filed the initial or reopened claim;
(c) Except as provided in paragraph (d) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period;
(d) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.
(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:
(a) Through the Web site provided by the agency for that purpose at https://uiclaims.des.ky.gov/ebenefit/ in which case the claim shall be completed before midnight on the Saturday of the calendar week following the second week of the period claimed; or
(b) By telephone through the interactive voice response system provided by the agency for that purpose, in which case the claim shall be completed between the hours of 2 p.m and 6 p.m., Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m., Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.
(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:
1. Unavailability of those options for the type of benefits claimed;
2. Unavailability of those options due to technical problems; or
3. A physical or mental condition preventing the worker from using those options.
(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.
(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section (1)(2).
(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:
(a) The worker has definite recall rights within four (4) calendar weeks;
(b) The employer has a workforce of at least 100 workers at the time of the layoff;
(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and
(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment will begin.
(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.
(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:
(1) The worker’s classification as established in Section 1(2) of this administrative regulation;
(2) The worker’s individual employment and earning history; and
(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:
(a) The employer’s failure to comply with 787 KAR Chapter 1;
(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or
(c) Failure by the division’s personnel to discharge necessary responsibilities.
(2)(a) Except as provided in paragraph (b) of this subsection,
an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The "Continued Claim Form", revised 10/95, and
(b) "Mass Electronic Filing Cell Data and Formatting Guide", revised 07/97.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RUSSELL L. SALSMAN
APPROVED BY AGENCY: November 5, 2008
FILED WITH LRC: November 5, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2008 at 6 p.m. EST at the Office of Employment and Training, Executive Director's Conference Room, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in having their views heard at this hearing shall notify this agency in writing by December 16, 2008 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky, 40621, phone (502) 564-2900, Fax (502) 564-5502.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry W. Moore

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the rules and processes by which an unemployed worker may apply for unemployment insurance benefits.
(b) The necessity of this administrative regulation: This administrative regulation is required to establish the means by which an unemployed worker may apply for unemployment insurance benefits as provided by KRS Chapter 341.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The current administrative regulation provides the rules and means by which unemployed workers may apply for unemployment insurance benefits, without which the statutes could not be implemented.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The proposed amendment clarifies the time frames available for filing of continued claims.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to advise the public of the time periods during which the various options for filing of continued claims may be accessed within a week.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program.
(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will inform the public of available options and time frames for filing of continued claims and will assist claimants in properly receiving their benefits in a timely fashion.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(a) Over 200,000 unemployed workers are affected annually by this administrative regulation.
(b) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this amendment, unemployed workers will be made aware of the available times for filing of continued claims by the various options provided in the administrative regulation, and will be able to select an option that will best allow them to file during the week based upon their personal circumstances.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost specifically associated with the amendment. Claimants filing continued claims by telephone will incur no cost (i.e., toll-free number). Claimants electing to file by Internet who do not have access in their homes could incur some voluntary travel cost to a location providing Internet access (e.g., OET local offices, public library, etc.).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Claimants will be able to choose the filing option which provided them with the best service.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There is no initial additional cost associated with the amendment.
(b) On a continuing basis: None associated with the amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No funding will be necessary to implement this amendment and the amendment will not require an increase in fees.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering is not applied to the amendment because it necessarily affects all claimants in order to afford all the same filing options.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to unemployment insurance coverage and thus are potentially affected by sections 4 and 6 of this administrative regulation. The proposed amendment does not directly affect these entities.

3. Identify each state or federal statute or federal regulation...
that requires or authorizes the action taken by the administrative regulation. KRS 151B.020, 341.115, 341.350, 341.360, 341.370 and 341.380.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? There is no cost associated with this amendment.
   (d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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

Revenues (+/-): None
Expenses (+/-): None
Other Explanation:

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:370. Entertainment destination center license.

RELATES TO: KRS 241.060(1), 243.030(41)(42), 243.040(18)(19)
STATUTORY AUTHORITY: KRS 241.060(1), EQ 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.030(41)(42) and 243.040(18)(19) authorize the Alcoholic Beverage Control Board to issue any other special licenses the board finds necessary for the proper regulation and control of traffic in alcoholic beverages. EQ 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet. This administrative regulation creates a special license to facilitate convention and tourism business in the commonwealth by permitting the retail sale of alcoholic beverages by the drink at entertainment destination centers.

Section 1. Definitions. (1) "Entertainment destination center" means a facility:
   (a) Located in a city of the first class or in a county containing a city of the first class or within an urban-county government under KRS Chapter 67A;
   (b) Containing a minimum of 100,000 square feet of building space located within 2,000 feet of:
      1. An existing tourism attraction; or
      2. A major convention facility measured from closest property line to closest property line; and
   (c) Containing a combination of entertainment destination venues including:
      1. Nightclubs;
      2. Restaurants;
      3. Leisure time activities; or
      4. Specialty retail stores.
   (2) "Major convention facility" means: any establishment licensed under KRS 243.050 as a convention center.
   (3) "Physical confines" of the center means:
      (a) Any portion of a public thoroughfare that is adjacent to or within the entertainment destination center when it is closed to vehicular traffic;
      (b) Any area designated by the lease as a common area; and
      (c) Any area included in the leased space or common areas and defined by a physical barrier, which would preclude motor vehicle traffic and limit pedestrian accessibility, as approved by the Alcoholic Beverage Control Board.

Section 2. An entertainment destination center license authorizes the licensee to sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within common areas of the entertainment destination center over which the licensee, by lease or ownership has exclusive control.

Section 3. (1) Each lessee of premises located within an entertainment destination center that intends to sell alcoholic beverages by the drink at retail shall apply for and obtain the necessary on-premises licenses under KRS 243.030 and 243.040.
   (2) If permitted by the owner or lessee of the entertainment destination center in the lease, a licensed retail drink licensee may also sell alcoholic beverages from one (1) nonpermanent facility if the facility is located 100 feet or less from the licensee’s permanent premises.
   (3) Each retail drink licensee shall obtain a supplemental bar license for the nonpermanent location.

Section 4. (1) On Thursday, Friday, and Saturday of each week, between the hours of 6 p.m. and up to 4 a.m., and during any other days and times as the owner or lessee of the entertainment destination center may determine and which are permitted by local ordinance and state statute, a licensee within the entertainment destination center may permit patrons to leave the individually licensed premises with an alcoholic beverage drink and enter other licensed premises and the common areas of the center, if adequate security is provided by the entertainment destination center licensee at each point of ingress and egress.
   (2) Each licensee shall serve all alcoholic beverages in containers bearing the licensee’s trademark, trade name, logo, or other identifying markings unique to that licensee.
   (3) Each licensee, including the entertainment destination center licensee shall prohibit patrons from taking alcoholic beverages of any kind outside the physical confines of the center.
   (4) At times other than those specified in subsection (1) of this section, and in accordance with local ordinance and state statute, the entertainment destination center licensee may permit alcoholic beverages to be consumed in nonpermanent locations and common areas if it provides adequate security at each point of ingress and egress.
   (5) During those times the entertainment destination center is operating pursuant to subsection (1) or (4) of this section, the entertainment destination center licensee shall ensure that minors can be easily distinguished from other patrons through use of identifying bracelets, hand stamps, badges or other visible means.
   (6) Each licensee of the center shall cause to be posted signs indicating the hours and days when alcoholic beverages may be consumed in the common areas pursuant to subsection (1) of this section and times when that consumption is prohibited.
   (7) The entertainment destination center license shall be solely responsible for notifying the department of the dates and times during which alcoholic beverages shall be sold in the nonpermanent retail locations and common areas pursuant to subsections (1) and (4) of this section.

Section 5. The holder of the entertainment destination center license shall be subject to the restrictions and prohibitions contained in KRS Chapters 243 and 244.

Section 6. (1) The entertainment destination center license shall not be a quota license and shall not be transferable to any other premises.
   (2) A licensee who obtains an alcoholic beverage license for permanent premises within the center shall not be prohibited from holding a retail drink quota license.
   (3) A licensee in the center shall be prohibited from holding retail package alcoholic beverage licenses; except, this section shall not prohibit a liquor package licensee with an existing contractual commitment from remaining at its licensed premises after the entertainment destination center license is issued.

Section 7. (1) Except as provided in this administrative regulation, all statutes and administrative regulations governing the retail sale of alcoholic beverages by the drink and the consumption of
alcohol by patrons shall be applicable to all retail establishments contained within the physical confines of the center.

(2) A licensee shall be solely responsible for alcohol violations occurring on its licensed premises, including its nonpermanent location and the entertainment destination center licensee shall be solely responsible for alcohol violations occurring at its nonpermanent locations, kiosks, or in any of the common areas.

(3) Proceedings relating to applications, renewals, suspensions, or revocations of the license created by this administrative regulation shall be conducted in the same manner as for any retail licensee, in accordance with the provisions of KRS Chapters 243 and 182.

(4) If the board suspends the entertainment destination center license, all retail drink sales at its nonpermanent locations, kiosks or common areas shall be suspended.

(5) If the alcoholic beverage license of an individual tenant of the center is suspended, the retail licensee shall not be permitted to sell alcoholic beverages for the duration of the suspension from either its permanent or nonpermanent locations.

NORMAN E. ARFLACK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: November 12, 2008
FILED WITH LRC: November 14, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on December 22, 2008 at 1 p.m. Eastern Time at the Department of Alcoholic Beverage Control Office, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amended 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 amended administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Virginia Vanaman Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Virginia Vanaman Davis, Internal Policy Analyst
(1) Provide a brief summary of: 304 KAR 4:370.
(a) What this administrative regulation does: This administrative regulation creates an Entertainment Destination Center License.
(b) The necessity of this administrative regulation: The regulation creates a special license to facilitate convention and tourism business in the commonwealth by permitting the retail sales of alcoholic beverages by the drink at entertainment destination centers. This administrative regulation amendment is necessary to promote the economic growth and advancement of tourism in Kentucky's Urban County Governments by providing a license type to facilitate the high quality, high energy entertainment business located in an urban center.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate administration regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation currently assists the changing economic conditions that threaten the economic welfare and viability of major urban centers unless there is an initiative to promote economic development in these centers. This administrative regulation amendment creates a license to address economic conditions.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Yes
(a) How the amendment will change this existing administrative regulation: The proposed administrative amendment will expedite locations qualified for this license type to add retail sales within the urban-county government under KRS Chapter 67A.
(b) The necessity of the amendment to this administrative regulation: The necessity of this administrative regulation is to assist the changing economic conditions threaten by the economic welfare and viability of major urban centers unless there is an initiative to promote economic development in these urban centers. This amendment to the administrative regulation is necessary to promote the economic growth and advancement of tourism in Kentucky and an urban county government by providing a license type to facilitate the high quality, high energy entertainment business located in an urban center.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the Alcoholic Beverage Control Board may promulgate administrative regulations.
(d) How the amendment will assist in the effective administration of the statute: The amendment of the administrative regulations provides detailed and stringent controls to help guard against violations of law and safety concerns.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation applies to all businesses located within the boundaries of any urban-county government under KRS Chapter 67A. As of September 25, 2008 Fayette County is an urban-county government.
(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 of the benefits each will accrue: Yes
(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: Currently Fayette County Urban-County Government under KRS 241.250 and the Department of Alcoholic Beverage Control under KRS 241.060 are authorized to regulate the trafficking in alcoholic beverages within their jurisdictional boundaries. Any business located within any urban-county government may apply, if qualified, for an entertainment destination center license with the board to provide the retail sales of alcoholic beverages by the drink at premises designed to facilitate and promote convention and tourism businesses in Kentucky.
(b) In complying with this administrative regulation or amendment each of which will list each of the entities identified in question (3): A license fee of $7,500 per year is currently established under KRS 243.030(41) for each applicant of an entertainment destination center license. There should be minimal cost to administer the amendment because Fayette County and the Department of Alcoholic Beverage Control already regulate and enforce all trafficking in alcoholic beverages at this time. No additional costs are expected during any subsequent years.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will provide an opportunity to use a new strategy to develop the type of thriving downtown arts and music businesses that the community has concluded are necessary to attract and retain professionals in an urban-county government center. The amendment will provide relief to the entertainment and tourism community and eliminate the number of businesses that make application under the guise of a restaurant only to obtain licensing.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: Nominal
(b) On a continuing basis: Nominal
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing trust and agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation for this year and subsequent years.
(7) Provide an assessment of whether an increase in fees or
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monitoring and enforcement of all trafficking in alcoholic beverages at this time.

Revenue (+/-)
Expenditures (+/-)

Other Explanation: There may be a minimal cost to administer this program at the local government level for this year or subsequent years. KRS 241.250 already establishes the authority for an urban-county government to regulate and enforce the trafficking of alcoholic beverages within their jurisdictional boundaries.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. There is no federal mandate for this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose sector requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for this administrative regulation.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:390. License renewals.

RELATES TO: KRS 243.090(1)
STATUTORY AUTHORITY: KRS 241.060(1), EO 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.090(1) requires the Department of Alcoholic Beverage Control to establish a year-round system for renewal of licenses. This administrative regulation establishes the system for license renewal. EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet.

Section 1. (1) The board shall establish the date each license expires, and the month the license shall be annually renewed, and announce renewing these dates. Every year each licensee shall renew its license on or before the expiration date of the license.

(2) The required renewal dates are included in the "ABC Table of License Expiration Dates by Zip Code" which is incorporated by reference.

Section 2. (Incorporation by Reference) (1) ABC Table, License Expiration Dates by Zip Code (07/15/04 Edition), Office of Alcoholic Beverage Control, is incorporated by reference.

(2) As material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Office of Alcoholic Beverage Control, 1003–Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

Section 2j. (1) Transports, out-of-state license types, solicitors/scrollers storage warehouse, and other smaller license type groups, designated by the state department, shall have licenses, which expire in the month of December.

(2) All other licenses shall expire during the months of January through November of each year, except for the months of July and August.

(3) The board may allow a licensee who owns multiple premises or locations to renew its license(s) at the same time. Licensees' names that begin with any numeral or the letters A–L shall have licenses expiring in July. Licensees' names that begin with the letters M–Z shall have licenses expiring in August.
Section 3.14(3) Licensees that qualify under Section 2093(3) shall have the option to renew their licenses separately. The licensee shall notify the board, in writing, of its intention to renew each premises separately. The board shall then select the license expiration date for each premises site according to the provisions in Section 1 of this regulation.

Section 4.16 The board may revise the dates licenses expire if it is in the best interest of the local administrators or the state department office.

Section 5. Incorporation by Reference. (1) "ABC Table, License Expiration Dates by Zip Code", 7/15/04 edition, Department of Alcoholic Beverage Control, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NORMAN E. ARFLACK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: November 13, 2006
FILED WITH LRC: November 14, 2006 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on December 22, 2008 at 11 a.m., Eastern Time at the Department of Alcoholic Beverage Control Office, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amended 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 amended administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Virginia Vanaman Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia Vanaman Davis, Internal Policy Analyst
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes a year-round system for renewal of alcoholic beverage licenses.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to codify the agency interpretation of KRS Chapters 241, 242, 243, and 244 to comply with amendments to KRS 243.090(1), effective 04/15/98, which requires the board to promulgate reasonable administrative regulation establishing a year-round system for renewal of an alcoholic beverage license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations governing procedures relative to the issuance of licenses, revocation of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction. KRS 243.090(1) requires the board to establish a year-round system for renewal of alcoholic beverage licenses.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides assistance to all licensees, local ABC administrators and the state ABC office in distributing the license renewal workload more evenly.
(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: Section (2) of the regulation needs to be amended with an updated edition of the "ABC Table of License Dates by Zip Code" document which is incorporated by reference to a 11/05/08 Edition date. This amendment provides the most current edition of the ABC form now used to figure the expiration date of a alcoholic beverage license by using the zip code of the premises where the license is located.
(b) The necessity of the amendment to this administrative regulation: Allpersons making application for an alcoholic beverage license or the renewal of an alcoholic beverage license need to have available the most current edition of the "ABC Table of License Dates by Zip Code" document which has been updated. The new edition date is now 11/05/06.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the ABC board to promulgate reasonable administrative regulations. KRS 243.090(1) requires the ABC board to establish a year-round system for renewal of alcoholic beverage licenses.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the most current edition (11/05/08 Edition) of the "ABC Table of License Dates by Zip Code" document incorporated by reference. This document shows which month an alcoholic beverage license will expire and provides the licensees with the correction information when they need to renew their licenses. The amendment complies with the provisions of KRS 243.090(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of November 5, 2008, there are 7,036 complaining holders of an alcoholic beverage license in Kentucky and are required to renew their licenses annually. There are also 139 local city and county ABC administrators that follow or use the document which is incorporated by reference to this regulation as a guide. These people need the most current edition of the document which allows you to figure out when an ABC license needs to be renewed during the year. The edition incorporated by reference needs to be updated with the 11/05/08 Edition.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amendment provides a more even workload throughout the year in renewing alcoholic beverage licenses and includes all areas of Kentucky that have voted wet since this regulation was created back in 2004.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None: This system has been in operation since 2004.
(b) On a continuing basis: None: This system has been in operation since 2004.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The existing Trust and Agency Account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this amendment to the administrative regulation. The amendment will not create any type of additional funding or expenses.
(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 assessments will be necessary to implement this amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this amendment to the administrative regulation directly or indirectly.
(9) TIERING: Is tiering applied? The statutory requirements are applicable to all licensees and, accordingly, tiering does not apply.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of ABC along with 137 local city and county ABC administrators and their offices are required to renew all ABC licenses annually. This regulation and its amendment will assist these offices by providing the most current and up-to-date information about the license expiration date and when the license should be renewed.

(3) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060, KRS 243.090, and EO 2008-507.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire department, or school district) for the first full year the administrative regulation is to be in effect. There will be no effect of the administrative regulation or its amendment on the expenditures and revenue of a state, federal, or local government agency or school district.

(a) How much revenue will this administrative regulation generate for the state or local governments (including cities, counties, fire departments, or school districts) for the first year? None. No additional revenue will be generated by the amendment of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None. No additional revenue will be generated by the amendment of this regulation.

(c) How much will it cost to administer this program for the first year? None. No additional costs will be generated by the amendment of the regulation.

(d) How much will it cost to administer this program for subsequent years? None. No additional costs will be generated by the amendment of the regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There will be no fiscal impact on the amendment of this administrative regulation.

Revenue (+/-): None
Expenditures (+/-): None

Other Explanation: There will be no cost added nor revenue generated by the amendment of this administrative regulation. The change is merely to provide the most current version of the form incorporated by reference with an 11/05/08 edition date.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. There is no federal mandate for this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements? There is no federal mandate for this administrative regulation.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

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

RELATES TO: KFRS 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KFRS 241.060, 243.380, 243.390, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KFRS 241.060(4) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. This administrative regulation prescribes the basic form to be used to apply for an alcoholic beverage license. EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department(Office) of Alcoholic Beverage Control the "ABC Basic" application form, with the exception of applicants for:

(1) Agent's, solicitor's, out-of-state brewer, out-of-state micro-brewer, and beer importer license;
(2) Special temporary license; and
(3) Transportion's license.

Section 2. In addition to the "ABC Basic" application form set forth in Section 1 of this administrative regulation, an applicant applying for an alcoholic beverage license shall complete and submit to the Department(Office) of Alcoholic Beverage Control an "ABC Schedule" form for the specific license type for which he is applying. The schedules are listed and incorporated by reference in 804 KAR 4 410.

Section 3. Incorporation by Reference. (1) The "ABC Basic" application form, 11/01/08 edition(11/09/07), is incorporated by reference.

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

(3) The application is also available on the authority's Web site, http://www.abc.ky.gov/.

NORMAN ARFLACK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 12, 2008
FILED WITH LRC: November 14, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008, at 10 a.m., EDT, in the offices of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. 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 amended administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON. Virginia Vanaman Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.
NORMAN ARFLACK, Commissioner  
ROBERT D. VANCE, Secretary  
APPROVED BY AGENCY: November 12, 2008  
FILED WITH LRC: November 14, 2008 at 8 a.m.  
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on December 22, 2008 at 1 p.m. Eastern Time at the Department of Alcoholic Beverage Control Office, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 the state, 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 amended 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 amended administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of Intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Virginia Vanaman Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia Vanaman Davis, Internal Policy Analyst

1. Provide a brief summary of: 804 KAR 9:010
(a) What this administrative regulation does: This administrative regulation establishes the manner in which the population of a county is to be ascertained for purposes of the number of licenses in a county.
(b) The necessity of this administrative regulation: The Alcoholic Beverage Control Board is authorized to promulgate administrative regulations relative to the applications for and revocations of licenses. KRS 241.060(2) authorizes the board to limit the number of licenses to be issued in any county of the commonwealth. This proposed amendment to the administrative regulation is to establish the number of licenses that may be issued to an outlet located within premises that has been issued an Entertainment Destination Center License (EDC license) under 804 KAR 4:370.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the Board may promulgate administrative rules that authorize the board to limit in its sound discretion the number of licenses of each kind or class to be license in this state or any political subdivision.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation currently assists the changing economic conditions that threaten the economic welfare and viability of major urban centers unless there is an initiative to promote economic development in these centers. This administrative regulation creates a license to address economic conditions.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of: Yes
(a) How the amendment will change this existing administrative regulation: The proposed administrative amendment will expand locations qualified for this license type to add all territorial confines of an urban county government under KRS Chapter 67A.
(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to promote the economic growth and advancement of tourism in an urban county government by providing a license type to foster the luxury, high energy entertainment business located in an urban center.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate administrative regulations. Section (2) of the statute also allows the board to limit the number of licenses of each kind or class to be issued in any political subdivision. The amendment conforms to the authorizing statutes by providing for retail drink licenses in excess of the number provided for in subsection (1) of 804 KAR 4:370 to outlets located within premises that has been issued an entertainment destination center license.

2. List the number and type of state and local governmental officials involved in the effective administration of the statutes: The amendment provides detailed and stringent controls to help guard against violations of law and safety concerns regarding the trafficking of alcoholic beverages at outlets licensed within a premises licensed as an entertainment destination center.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amended administrative regulation applies to state and local agencies that regulate the trafficking in alcoholic beverages. State and local agencies will be required to issue and monitor those business that are licensed to sell alcoholic beverages at entertainment destinations center locations in cities of the first class and their counties and in counties containing an urban county government. Currently there is one licensed entertainment destination center license premises in Jefferson County, Kentucky. The amendment would affect Fayette County who operates as an urban county government under KRS Chapter 67A.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if now, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require the state and local ABC agencies in Jefferson and Fayette County to monitor and enforce the ABC laws and regulations at any facility holding an EDC license. Jefferson County has one EDC premises and approximately 10 businesses licensed within the EDC premises as of this date. At this time Victorian Square in Fayette County is prepared to apply for an EDC license to facilitate the economic development and growth in an urban county government. The number of individual business entities that would apply for a license within the EDC premises in Fayette County is unknown at this time but estimated to be approximately eight.
(b) Complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost anticipated at the state level because the ABC budget currently has provisions in its existing trust and agency account, KRS 243.025, which provides the necessary funding to be used for the implementation and enforcement of this amendment. There should be minimal cost to administer this program at the local government level for this year or subsequent years.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment of the administrative regulation should provide an opportunity to use a new strategy to develop the type of thriving downtown art and music business that the community has concluded are necessary to attract and retain professionals in an urban-county government center. The amendment should provide an economic benefit to all urban county governments.

5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nominal
(b) On a continuing basis: Nominal

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing trust and agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation. There should be minimal cost to administer this program at the local government level for this year or subsequent years.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No fees are increased with the amendment of this administrative regulation. The statutes currently provide for a license fee of $7,500 annually
to be paid under KRS 243.030(41) which has been established since 2004. No funding will be necessary to implement this amendment to the administrative regulation now or in subsequent years.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No additional fees or funding is to be established or required in the amendment of this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable since the amendment of this administrative regulation treats all qualified applicants and licensees equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control's licensing and enforcement divisions will be impacted by the amendment of this administrative regulation. And all urban-county governments in Kentucky will also be impacted by the amendment of this administrative regulation. Both state and local ABC agencies will be required to monitor and regulate the alcoholic beverage activity of premises licensed under this amendment.

(3) To identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) and (2), and 243.030(41) are the state statutes authorized by the amendment of this regulation. KRS 241.250 is the statute that authorized the amendment at the local level.

(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. The Department of ABC and the local ABC urban county government agencies currently provide budgeting to monitor and enforce all ABC trafficking of alcoholic beverages in their jurisdictions.

(a) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue this amendment will generate for the state or local governments, but it is estimated to be minimal. At this time Victorian Square in Fayette County is the only potential applicant known who would be required to pay an annual state license fee of $7,500 already established under KRS 243.030(41).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue this amendment will generate for the state or local governments, but it is estimated to be minimal. At this time Victorian Square in Fayette County is the only potential applicant known who would be required to pay an annual state license fee of $7,500 already established under KRS 243.030(41).

(c) How much will it cost to administer this program for the first year? Minimal. The cost to administer this amendment is already a part of ABC's budget now covered by its trust and agency account established under KRS 243.025. Local ABC urban county government agencies currently provide budgeting to monitor and enforce all ABC trafficking of alcoholic beverages.

(d) How much will it cost to administer this program for subsequent years? Minimal. The cost to administer this amendment is already a part of ABC's budget now covered by its trust and agency account established under KRS 243.025. Local ABC urban county government agencies currently provide budgeting to monitor and enforce all ABC trafficking of alcoholic beverages.

Revenue (+/-):

Expenditures (+/-):

Other Explanation: There shall be minimal cost to administer this program at the local government level for this year or subsequent years.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. There is no federal mandate for this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the position of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(2)(7)
(2)(7)

804 KAR 9:40. Retail package liquor license quota.

RELATES TO: KRS 241.060(2), 241.065, 241.075, 243.030(7)

STATUTORY AUTHORITY: KRS 241.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to issue in the state or any political subdivision, and restrict the locations of licensed premises. This administrative regulation establishes a necessary-to-establish individual quotas for smaller political subdivisions within a county when the general retail package liquor license quota established in 804 KAR 9.010, if applied, would result in the issuance of more licenses than the population of the political subdivision could reasonably support [an imbalance of no-need-for-government-deproportionate-to the population of the political subdivision. The function of this administrative regulation is to establish individual retail liquor license quotas for political subdivisions of a county in which a prohibition has been repealed.]

Section 1. The city of Pikeville repealed prohibition on April 12, 1983, therefore the board shall set the retail package liquor license quota of thirteen (13) for the city of Pikeville as the resident population of the city of Pikeville is 4,756 and the resident population of Pike County is 61,123.

Section 2. The city of Madisonville repealed prohibition on March 10, 1982, therefore the board shall set the retail package liquor license quota of seven (7) for the city of Madisonville as the resident population of the city of Madisonville is 16,200 and the resident population of Hopkins County is 45,954.

Section 3. The city of Central City repealed prohibition on July 10, 2002, therefore the board shall set the retail package liquor license quota of four (4) for the city of Central City as the resident population of the city of Central City is 5,785 and the resident population of Muhlenburg County is 31,548.

Section 4. The city of Dawson Springs repealed prohibition on February 5, 2003, therefore the board shall set the retail package liquor license quota of one (1) for the city of Dawson Springs as the resident population of the city of Dawson Springs is 2,904 and the resident population for Hopkins County is 46,286.

Section 5. The city of Lancaster repealed prohibition on August 19, 2008, therefore the board shall set the retail package liquor license quota of three (3) for the city of Lancaster as the resident
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia Vanaman Davis, Internal Policy Analyst

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the basic form to be used when a person applies for an alcoholic beverage license.

(b) The necessity of this administrative regulation: KRS 241.060(1) authorized the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. The necessity of this regulation is to provide the form any person or entity will use to apply for an alcoholic beverage license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1), 243.380, 243.390, 164.772, 20 U.S.C. 1078(b)(6), and EO-2008-507. KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations governing procedures relative to the applications for the revocations of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction. KRS 243.380 requires applicants to complete an application form furnished by the Department. KRS 243.390 outlines the information contained in the application. KRS 164.772 and 20 U.S.C. 1078(b)(6) requires a licensing agency to provide information to KHEAA of any person who is in default of a repayment of a Kentucky student loan. The executive order 2000-507 is the executive order creating the Public Protection Cabinet and the Department of ABC.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides assistance to all entities who wish to apply for an alcoholic beverage license by providing the basic application form.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: The amendment to the administrative regulation is to provide the most current version of the ABC document revised (11/01/08 Edition) incorporated by reference. The amendment will also reduce the paper work and time ABC will need to process an application for licensing.

(a) How the amendment will change this existing administrative regulation: The amendment will provide the most current version of the ABC basic application form to use when an company applies for an alcoholic beverage license. The amendment also adds a statement to section (g), question 18 of the ABC basic application. This statement will allow the person signing the application to answer for all other persons who have ownership in the ABC license that none is in default of a repayment of a Kentucky student loan under KRS 164.772. This will reduce the amount of paper work required to apply for an ABC license and reduce the amount of time it take to process an ABC application for licensing.

(b) The necessity of the amendment to this administrative regulation: The Kentucky Higher Education Assistance Authority through a contract has requested the Department of ABC not to issue a license to those persons who are in default of repayment owed to Kentucky through student loans. KRS 165.772 prohibits licensing agencies from issuing or renewing a license of any person who is in default of the repayment obligation under any financial assistance program in KRS Chapters 164 and 164A. The amendment requires all persons making application for an ABC license to swear or affirm they are not delinquent under KRS 164.772. The amendment incorporates this question on the ABC basic application and eliminates the current requirement of collecting a separate signed and dated statement from every individual that has any ownership in an ABC license. The amendment therefore reduces paper work and allows ABC to process applications in less time.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 165.772 prohibits a licensing agency from issuing a license to persons who are in default of the repayment obligation under any financial assistance program in KRS Chapters 164 and 164A. The amendment requires a person applying for an ABC license to state they are in compliance with the statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department of ABC by insuring an ABC license is not issued to a person who is in default of the repayment obligation of a Kentucky student loan under any financial assistance program in KRS Chapters 164 and 164A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of November 01, 2008, there are 7,036 entities that hold an alcoholic beverage license issued by the Department of ABC. Any person or entity that makes application for a new ABC license would be required to use the same ABC basic application to obtain a license. In addition to the number of people making applications for an ABC license there is also 137 local city and county ABC administrators offices that review and some use this same ABC basic application form when applying for a local ABC license.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment provides a more efficient process if all entities use the same version of the form to apply for an ABC license. Therefore there will be no impact by any group regarding the regulation or its amendment.

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

(a) Initially: None.

(b) On a continuing basis: None.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The existing Trust and Agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of making application for an ABC license.

(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 assessments will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or assessments will be established or increased to implement this amended administrative regulation.

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all licensees and, accordingly, tiering does not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

The Department of ABC along with most of the 137 local city and county ABC office use the same form when making application for an ABC license. This amendment will reduce paper work and allow all offices to process an application for an ABC license in less time.

(3) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1), 243.380, 243.390, 164.772, and 20 U.S.C. 1078(b)(6), EO-2008-507.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues 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 effects of this administrative regulation on the expenditures and revenues of a state, federal, or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)? 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
by the Alcoholic Beverage Control Board in any county of the Commonwealth shall not exceed a number equal to one (1) for every 2,500 persons resident, subject to the exceptions in subsections (2), (3), (4) and (5) and (6) of this section. A county containing cities of the first class shall be subject to the limitations in KRS 241.065.

(2) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is:

(a) For an outlet in a hotel, inn or motel for accommodation of the traveling public;
(b) Designed primarily to serve transient patrons; and
(c) An applicant shall submit to the Board satisfactory proof that the facility shall accommodate sufficient patrons to sustain the operation of a retail drink outlet. The facility shall:
1. Contain at least fifty (50) sleeping units;
2. Contain dining facilities for at least 100 persons; and
3. Receive at least fifty (50) percent of its gross receipts from the sale of food.

(3) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is for an outlet in an airport terminal where commercial flights are made in or near cities of the first, second or third class in wet counties.

(4) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is:
(a) For a restaurant, as defined by KRS 241.010(37),
(b) Has a minimum seating capacity of 100 people at tables;
(c) An applicant shall submit to the board:
1. Satisfactory proof that the facility meets the criteria in paragraphs (a) and (b) of this subsection; and
2. A certification of seating capacity by the applicable fire marshal's office; or its equivalent; and
(d) Upon application for renewal, the licensee shall submit an annual report to the board indicating annual gross receipts from the sale of food and the sale of alcoholic beverages.

(5) The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number provided in subsection (1) of this section if the license is for an outlet located within a premises that has been issued an Entertainment Destination Center License under 804 KAR 4:370.

(6) Licenses issued under the exceptions in subsections (2), (3), (4) and (5) and (6) of this section, shall not be transferred to other premises.

Section 3. (1) The estimates of population for Kentucky counties prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

(2) On or before January 1 of each year, the Alcoholic Beverage Control Board shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for those counties in which license quotas may need to be reviewed by the Board. Upon receipt of these estimates from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, the Alcoholic Beverage Control Board, shall within thirty (30) days, send a specific notice to the newspaper with the largest circulation in each county where the estimate justifies a change in that county's quota, and issue a release of this information to the general press. The Department/Office of Alcoholic Beverage Control shall accept applications for new quota licenses for a period of thirty (30) days following the date of publication in the newspaper of each county affected.

Section 4. This administrative regulation shall not prohibit renewal of licenses. The present quota shall be reduced, in conformance with this administrative regulation, as licenses are revoked or surrendered.
population of the city of Lancaster is 4,395 and the resident population of Garrard County is 17,041.

LATASHA BUCKNER, General Counsel
NORMAN AREFLACK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: November 12, 2008
FILED WITH LRC: November 14, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on December 22, 2008 at 3 p.m. Eastern Time at the Department of Alcoholic Beverage Control Office, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to present evidence in support of the proposed amended 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 amended administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Virginia Vanaman Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia Vanaman Davis, Internal Policy Analyst

1. Provide a brief summary of: 804 KAR 9:040 Retail package liquor license quota. The administrative regulation is to establish individual quota licenses for smaller political subdivisions within a county when the general retail liquor license quota established in 804 KAR 9:010, if applied, would result in the issuance of an impermissible number of licenses disproportionate to the population of the political subdivision.

(a) What this administrative regulation does: The administrative regulation establishes a retail package liquor license quota for the city of Dawson Springs and the city of Lancaster.

(b) The necessity of this administrative regulation: This administrative regulation amendment provides a license quota in the city of Lancaster and in the city of Lancaster, Kentucky where the number of retail package liquor licenses is disproportionate to the population of the city.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 241.060(1) provides that the board may promulgate administrative regulations. KRS 241.060(2) authorized the board to limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the board may make reasonable division and subdivisions of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions or subdivisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation currently assists the cities of Madisonville, Central City, and Pikeville in establishing a set quota for retail liquor licenses that could support the population of their political subdivision. Amending this regulation will assist the city of Dawson Springs and the city of Lancaster in the same manner.

(e) If this is an amendment to an existing administrative regulation, provide a brief summary of: Yes. The amendment to the administrative regulation will establish a set quota for retail package liquor licenses in the city of Dawson Springs, Kentucky and in the city of Lancaster, Kentucky.

(f) How the amendment will change this existing administrative regulation: The proposed administrative amendment will establish a quota for retail package liquor licenses in the city of Dawson Springs and the city of Lancaster proportionate to the population of the territory.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is to establish individual quota licenses for smaller political subdivisions within a county when the general retail liquor license quota established in 804 KAR 9:010, if applied, would result in the issuance of an impermissible number of licenses disproportionate to the population of the political subdivision. The amendment to the administrative regulation will provide the city of Dawson Springs and the city of Lancaster with a quota for retail package liquor licenses according to its territory population.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(2) of the statute allows the board to limit the number of licenses of each kind or class to be issued in any political subdivision. The amendment will establish a quota for retail package liquor licenses in the city of Dawson Springs and the city of Lancaster according to the current territory population.

(d) How the amendment will assist in the effective administration of the statute: The amendment will establish the number of retail package liquor licenses that may be issued to the city of Dawson Springs and the city of Lancaster proportionate to territory population.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the Ky. Department of Alcoholic Beverage Control by providing a limited number a retail package liquor licenses that may be issued to the city of Dawson Springs and the city of Lancaster. The regulation will also affect the city of Dawson Springs and the city of Lancaster who are allowed to issue retail package liquor licenses under KRS 241.100 and 243.070 of the statutes. The amendment would allow one (1) new retail package liquor license in the quota in the city of Dawson Springs. According to the University of Louisville, State Data Center, Urban Studies Center in Louisville, Kentucky, the figures for population are: The 2007 counts for Dawson Springs are 2,908 persons. The 2007 counts for Hopkins County are 46,286 persons. The amendment will also allow three (3) new retail package liquor licenses in the city of Lancaster. According to the University of Louisville, State Data Center, Urban Studies Center in Louisville, Kentucky, the figures for population are: The 2007 counts for Lancaster are 4,395 persons. The 2007 counts for Garrard County are 17,041 persons.

(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation or amendment: Any person wishing to open a retail package liquor store in the city limits of Dawson Springs and the city of Lancaster, Kentucky will make application to the local city ABC administrator and the Kentucky State ABC administrators for licensing.

(g) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? No additional fees are requested.

(h) As a result of compliance, what benefits will accrue to the entities identified in question (5)? The amendment will provide clarification for all applicants and holders of ABC licenses and establish a retail package liquor license quota according to the proportionate population of the city of Dawson Springs and the city of Lancaster, Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The existing trust and agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement this proposed administrative regulation at the state level.

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KRS 241.190 and 243.070 provides the necessary funding for the city of Dawson Springs and the city of Lancaster.

(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 assessments will be necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No new fees are established by this amendment. A license fee and annual renewal fee of $500 per license is consistent with and equal to the license fee for a Kentucky retail package liquor license under KRS 243.030(7).

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all ABC applicants for licensing and, accordingly, tiering does not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Virginia Vanaman Davis, Internal Policy Analyst
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What 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 Commonwealth of Kentucky, Department of Alcohol and Beverage Control's licensing division will be required to process all applications and licenses issued by this administrative regulation. The city of Dawson Springs in Hopkins County and the city of Lancaster in Garrard County, Kentucky will be required to process and issue all applications and licenses in their territories.

3. Identify each state or federal statute or federal regulation that requires or authorizes the actions taken by the administrative regulation, KRS 241.061, 241.190, 241.065, 241.075, 243.050(7), 243.070(1)(e)(4) and 804 KAR 9 010.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on this administrative regulation on the expenditures and revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is anticipated minimal revenue will be generated from this amendment. Under KRS 243.030(7), the state could receive up to $500 annually in the new package liquor license fees issued for Dawson Springs and $1,500 annually if three (3) retail package liquor licenses were issued in the city of Lancaster. The city of Dawson Springs, Kentucky could receive up to $600 annually if one (1) new retail package liquor license were issued under KRS 243.070(1)(e)(4). The city of Lancaster, Kentucky could receive up to $1,600 annually if three (3) new retail package liquor licenses were issued under KRS 243.070(1)(e)(4).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is anticipated minimal revenue will be generated from this amendment. Under KRS 243.030(7), the state could receive up to $500 annually if one (1) new retail package liquor license were issued in the city of Dawson Springs and $1,500 annually if three (3) retail package liquor licenses were issued in the city of Lancaster. The city of Dawson Springs, Kentucky could receive up to $600 annually if one (1) new retail package liquor license were issued under KRS 243.070(1)(e)(4). The city of Lancaster, Kentucky could receive up to $1,600 annually if three (3) new retail package liquor licenses were issued under KRS 243.070(1)(e)(4).

5. Determine the costs of implementing this administrative regulation amendment. Minimal to none - KRS 243.025 already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation amendment.

6. Justification for the classification of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for this administrative regulation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing (Amendment)

805 KAR 5:030. Prohibition against working or traveling under an unsupported roof; penalties.

RELATES TO: KRS 351.010(1)(d), 351.020, 352.201
STATUTORY AUTHORITY: KRS [Chapter 53A,] 351.070(13), 352.201
NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.201 requires each underground mine to have an approved roof control plan and directs that a person shall not [person shall] proceed beyond temporary or permanent roof support. This administrative regulation establishes procedures for the department's response in [person shall not] circumstances when a person works or travels under an unsupported roof.

Section 1. Definitions. (1) "Mine foreman" is defined by KRS 351.010(1)(d).

(2)(Definition) "Unsupported roof" means the roof in any portion of an underground coal mine in which [it] temporary or permanent roof support system has not been installed and shall include [any and] all areas of an underground coal mine, including breaks, fall areas, and pillar lines; but "unsupported roof" shall not refer to a roof which has [adequate natural support] that has been determined to have adequate natural support either initially or following the installation of artificial roof support.

Section 2. (1)(a) A [No] person shall not work or travel under an unsupported roof in any underground coal mine.

(b) Mining-related activities, including equipment installation and maintenance, clean-up or activities preparatory to the installation of temporary or permanent roof support shall be performed under an unsupported roof, and [it] justification for performing these activities shall not be accepted by the department.

(2)(a) [Within sixty (60) days from the effective date of this administrative regulation, all persons] working in an underground coal mine shall be instructed by the management of the mine [any such activities] the hazards of proceeding beyond temporary or permanent roof support.
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(5) A[any] person who proceeds beyond temporary or permanent roof support shall be personally liable for [any] violation of proceeding beyond temporary or permanent roof support.

(6) A mine [without regard to individual responsibility, however, each mine's] foreman or section foreman shall exercise primary and duty to ensure that a person shall not work or travel [without the authority of that foreman works or travels] under an unsupported roof.

(3)(a) If an inspector for the department does not observe a person [unless an inspector of the department observes person] working or traveling underneath an unsupported roof, the inspector shall [otherwise] determine if the area below an unsupported roof appears to have been used or otherwise occupied by mining personnel.

(2) Use or occupancy shall be deemed to have occurred if there is physical evidence indicating to the inspector that a person [has] worked or traveled under an unsupported roof.

Section 3. (1) (a) [Wherever] an inspector of the department observes or otherwise determines that the personnel have proceeded under an unsupported roof, the inspector shall document the observation [and in a report to the district supervisor. That report shall include:

(a) The name and location of the mine at which the violation is alleged to have occurred;

(b) The time and date of the violation, if known;

(c) The person [or persons] observed or believed to have worked or traveled under an unsupported roof;

(d) The basis for belief if conduct was not [as conduct was] actually observed;

(e) The name of the mine foreman or section foreman under whose responsibility the person [or persons] were working at the time the conduct occurred; and

(f) The name of the instructor who administered the most recent training to the person alleged to have proceeded under an unsupported roof, the date of that training, and the location at which the training [was administered]; and a recommendation of the action to be taken by the department with respect to the violation alleged. The report shall be tendered to the district supervisor within two [2] working days of the date upon which the inspector observes or becomes aware of the violation alleged.

[3] Upon [his] receipt of the report from the inspector, the district supervisor shall forward to the Executive Director of the Office of Mine Safety and Licensing, a copy of the report and a letter describing the severity of the violation and naming personnel who are responsible for the violation. [Attempt to verify the matters set out in the inspector's report and in making that verification, may] enforce the provisions of the underground mines at which the violation is alleged to have occurred, pursuant to KRS 361.140(9).

Within [five] (5) working days of the receipt of the report from the inspector, the district supervisor shall tender to the commissioner a report of the alleged violation, together with a summary of the efforts undertaken by the district supervisor to verify the information set out in the inspector's report, and a recommendation to the commissioner as to any response to the violation alleged which the department should make.

Within thirty [30] days of his receipt of the report and recommendation from the district supervisor, the commissioner shall determine whether the violation alleged is to be made subject to hearing. If the commissioner determines that a hearing is required to adjudicate the violation alleged, he shall serve a notice of violation to be prepared and delivered to all persons named in the district supervisor's report who appear to have responsibility, in some capacity, for that violation, which notice shall describe the violation alleged and establish a time and place for the hearing to consider it. Any person alleged to have worked or traveled under unsupported roof, or to otherwise have some responsibility for that violation, shall be given not less than thirty [30] days notice of the hearing at which he will be required to appear and respond to the allegations made.

(4) Not more than thirty [30] days following a hearing, at which the commissioner or his designee shall preside, the department shall issue findings of fact, conclusions of law and an order with respect to the matters heard at the hearing, copies of which shall be provided to the mine operator and to all parties to the hearing. If the person charged with working or traveling-under unsupported roof is found guilty of that charge, he shall be required to complete an eight (8) hour course of roof control methods and safety procedures, including roof control plans and the hazards of working or traveling under unsupported roof. The course of instruction shall be developed by the department, which shall administer it in the office of the district in which the violation is found to have occurred. An employer shall not be responsible for paying the salary of any person required to complete the eight (8) hour course following a finding of that person's having worked or traveled under unsupported roof, although the eight (8) hour period required to complete the course shall be treated as an excused absence by the mine operator. A person found guilty of having worked or traveled under unsupported roof or having permitted or contributed to that violation shall not be permitted to resume employment in any underground coal mine until he has completed the eight (8) hour course of instruction, which shall be timely provided by the department to the person required to complete it.

(5) If any person fails to complete the eight (8) hour course of instruction, he shall be required to enroll for and complete another such course. At the discretion of the department, however, the Board of Miner Training, Education and Certification, established in KRS 361.105, may also be advised of his failure to complete the eight (8) hour course of instruction and may commence whatever action it deems appropriate with respect to the failure to complete the course.

(6) Upon the department's determination that a person has proceeded beyond temporary or permanent roof support, the management of the mine at which he was employed at the time of the violation shall conduct, with all mine employees and in the presence of a representative of the department, a training session of not less than thirty [30] minutes duration concerning roof control methods and safety procedures, specifically including a discussion of the prohibition against working or traveling under unsupported roof.

Section 4. The following procedure shall apply to any person who has been found by the commissioner to have worked or traveled under unsupported roof and who has thereafter completed the eight (8) hour course on roof control methods and safety procedures as described above: who is alleged to have again worked or traveled under unsupported roof, the department's inspector shall make his report and recommendation to the district supervisor within two (2) working days of observing or becoming aware of the alleged violation. The contents of that report shall be identical to those described in Section 3(4) of this administrative regulation. Upon his receipt of the report, the inspector shall tender the commissioner a report of the alleged violation, together with a summary of the efforts undertaken by the district supervisor to verify the information set out in the inspector's report, and a recommendation to the commissioner as to any response to the violation alleged which the department should make.

(3) Within thirty [30] days of his receipt of the report and recommendation from the department, the commissioner shall determine whether the violation alleged is to be made subject to hearing. If the commissioner determines that a hearing is required to adjudicate the violation alleged, he shall serve a notice of violation to be prepared and delivered to all persons named in the commissioner's report who appear to have responsibility, in some capacity, for that violation, which notice shall describe the violation alleged and establish a time and place for the hearing to consider it. Any person alleged to have worked or traveled under unsupported roof, or to otherwise have some responsibility for that violation, shall be given not less than thirty (30) days notice of the hearing at which he will be required to appear and respond to the allegations made.

(4) Not more than thirty (30) days following a hearing, at which the commissioner or his designee shall preside, the department shall issue findings of fact, conclusions of law and an order with respect to the matters heard at the hearing, copies of which shall be provided to the mine operator and to all parties to the hearing. If the person charged with working or traveling under unsupported roof is found guilty of that charge, he shall be required to complete an eight (8) hour course of roof control methods and safety procedures, including roof control plans and the hazards of working or traveling under unsupported roof. The course of instruction shall be developed by the department, which shall administer it in the office of the district in which the violation is found to have occurred. An employer shall not be responsible for paying the salary of any person required to complete the eight (8) hour course following a finding of that person's having worked or traveled under unsupported roof, although the eight (8) hour period required to complete the course shall be treated as an excused absence by the mine operator. A person found guilty of having worked or traveled under unsupported roof or having permitted or contributed to that violation shall not be permitted to resume employment in any underground coal mine until he has completed the eight (8) hour course of instruction, which shall be timely provided by the department to the person required to complete it.

(5) If any person fails to complete the eight (8) hour course of instruction, he shall be required to enroll for and complete another such course. At the discretion of the department, however, the Board of Miner Training, Education and Certification, established in KRS 361.105, may also be advised of his failure to complete the eight (8) hour course of instruction and may commence whatever action it deems appropriate with respect to the failure to complete the course.

(6) Upon the department's determination that a person has proceeded beyond temporary or permanent roof support, the management of the mine at which he was employed at the time of the violation shall conduct, with all mine employees and in the presence of a representative of the department, a training session of not less than thirty (30) minutes duration concerning roof control methods and safety procedures, specifically including a discussion of the prohibition against working or traveling under unsupported roof.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 7, 2008
FILED WITH LRC: November 12, 2008 at 2 p.m.

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at the hearing are invited to notify the agency by writing December 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made at the public hearing. If you wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capitol Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure for the department's response to circumstances in which persons work or travel under an unsupported roof.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent accidents occurring due to unsupported roof collapses.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 352.201 requires each underground mine to have an approved roof control plan that directs no person shall proceed beyond temporarily or permanently supported roofs.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 352.201 requires each underground mine to have an approved roof control plan that states no person shall proceed beyond temporarily or permanently supported roofs. This administrative regulation details the department's course of actions concerning individuals working in unsupported roof situations.
(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 alter the penalty process in order to better align with the statute.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulation to incorporate the changes established by SB 200 of the 2006 legislative session.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 352.201 requires each underground mine to have an approved roof control plan that states no person shall proceed beyond temporarily or permanently supported roofs. SB 200 changed the penalties and procedure for assessing penalties (KRS 351.070 (15)). This amendment will update the administrative regulation to include the changes from SB 200.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will alter the process the department takes relating to individuals working or traveling under unsupported roofs.
(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 underground mines and individuals which will be in areas where roof support is required to maintain a safer working environment.
(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) A list of actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments contained within this administrative regulation will have minimal bearing on the entities listed above. The changes are mainly related to the department's response to violations of working or traveling under unsupported roofs.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There are no costs associated with this administrative regulation to the entities listed in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The entities in question (3) will work in safer conditions due to 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: There will be no additional costs associated with the implementation of this amendment.
(b) On a continuing basis: There will be no additional costs associated with the 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 Fund dollars will be used to fund this program.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase funding to implement the amendments in this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not create or increase any fees.
(9) TIERING: Is being applied: No. All individuals that work in underground mine will be exposed to the same roof control 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 Office of Mine Safety and Licensing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 352.201 requires each underground mine to have an approved roof control plan that directs no person shall proceed beyond temporarily or permanently supported roofs.
4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 significantly affect expenditures or revenues.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.
(c) How much will it cost to administer this program for the first year? The costs associated with this program are minimal.
(d) How much will it cost to administer this program for subsequent years? The costs associated with administering this program are minimal.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing

(Amendment)

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105
STATUTORY AUTHORITY: KRS 351.102, 351.106
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 provide for the establishment of a program of training and education of inexperienced underground and surface coal miners. This administrative regulation establishes the procedure for public and private entities to submit training programs to the Mining Board for approval.

Section 1. A training program for inexperienced miners shall be approved by the board if the proposed program meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been certified by the Kentucky Department for Natural Resources, the Department of Labor, Mine Safety and Health Administration.

Section 2. (1) A person who desires to provide a training program to inexperienced miners shall submit the proposed training program to the Mining Board, P.O. Box 2244, Frankfort, Kentucky 40602-2244, for review.
   (2) The proposed training program shall contain the following information:
      (a) The address and location of the training facility to be used;
      (b) A description of the equipment and facilities to be used;
      (c) A list of the participating instructors;
      (d) The content areas in the training program for which each instructor shall be responsible;
      (e) The approximate number of students per class;
      (f) The dates on which the training program will be conducted;
      (g) The name and address of the person responsible for the formulation and implementation of the training program;
      (h) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
      (i) A list of instructional material to be used including films or programmed material and noting where such material will be used within the instructional sequence; and
      (j) A description of the instructional methods to be used throughout the program including lecture-demonstration, personalized instruction, and team-teaching.

Section 3. (1) Approval granted by the board in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.
   (2) The department shall have the authority to monitor an approved program without prior notice.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 7, 2008
FILED WITH LRC: November 12, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. (Eastern Time) at Conference Room D-18 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing December 15, 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 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 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the procedure for public and private entities to submit training programs to the Kentucky Mining Board for approval.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on the training of inexperienced miners and the approval of the training by the Kentucky Mining Board.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.106(1) requires the Mining Board to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes the procedures for the public and private entities to submit training programs to the Kentucky Mining Board for approval.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 351.106(1) requires the Mining Board to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation details the procedures that public or private entities should go through and minimal criteria for training programs to be approved by the Kentucky Mining Board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment will allow the same approval process for underground mining training programs to apply to surface mining training programs.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to set up minimum criteria for approval of the program for training inexperienced surface coal miners.
   (c) How the amendment conforms to the content of the authorizing statutes: KRS 351.106(1) requires the Mining Board to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This amendment allows for the same approval criteria to apply to surface miners as well as underground miners.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment extends the training program approval criteria to properly include surface miners. Previously this regulation only applied to underground miners.

(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 individuals that train underground miners in Kentucky. The amendment will also allow these same training approval criteria to apply to surface miners. Therefore it will apply to all those individuals that are deemed inexperienced miners regardless of whether they work at an underground mine or surface mine.

(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 amendments contained within the
administrative regulation will not have an effect on underground mining. However, surface mining will need to submit training programs for approval as well as meet the minimum qualifications for a training program approval listed in Section 2 of this administrative regulation.  

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The entities in question (3) will benefit by having an approved program to administer to those individuals in the surface mining industry.  

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

(a) Initially: There will be no additional costs associated with the implementation of this amendment.  

(b) On a continuing basis: There will be no additional costs associated with the implementation of this amendment.  

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund this program.  

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

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

(9) TIERING: Is tiering applied? No. All individuals interested in surface mining training will receive the same training.  

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT  

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Kentucky Mining Board.  

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 351.106 authorizes the Mining Board to approve training programs for inexperienced miners. This administrative regulation extends that approval to include surface mines.  

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 significantly affect expenditures or revenues.  

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.  

(c) How much will it cost to administer this program for the first year? The costs associated with this program are minimal.  

(d) How much will it cost to administer this program for subsequent years? The costs associated with administering this program are minimal.  

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

Revenues (+/-):  
Expenditures (+/-): N/A  
Other Explanation: N/A
10. Skull and spine injuries; 
11. Chest, abdominal, and genital injuries; 
12. Medical emergency; 
13. Hazardous materials; 
14. Environmental and electrical emergencies; 
15. Special psychosocial and behavioral problems; 
16. Disaster management; 
17. Lifting and moving; 
18. Extinctions; 
19. Infection control; and 
20. Burns, [instruction in the materials set out in the BRAND basic first responder text, 1st edition, chapters 1-23 and 25-29.] 

(a) The training course shall be 40 (40) hours in duration; 
(b) Be taught by an instructor certified by the OSMI [department]; 
(c) Include equipment, texts, audio-visual and other materials approved by the OSMI [department] as adequate to train METs; 
(d) Be limited to thirty (30) students per instructor; and 
(e) Be conducted at a training facility approved by the OSMI [department] as adequate to train METs.

Section 4. MET Certification Examination. (1) At the time of taking the MET certification examination, the applicant shall provide verification on a Certificate of Training form, Federal Form 5000-23, that the applicant has successfully completed the standard prescribed MET training and education prescribed by the OSMI [department].

(2) The Certificate of Training form, Federal Form 5000-23, shall be signed by the MET applicant and be endorsed with the MET instructor certification number and signed by the MET instructor who administered the MET course to the applicant.

(3) The initial MET certification exam shall be taken within sixty (60) days of completion of the MET training course required in Section 3 of this administrative regulation.

(4) The MET certification examination, consisting of two (2) parts, shall be presented and administered by OSMI and shall consist of the following two (2) parts: the department,

(a) Written examination with an overall grade of eighty (80) percent shall be required to pass; and 
(b) An oral examination, which shall consist of the following two (2) parts:

1. a. The first part shall consist of mandatory stations in which the applicant shall be tested on one (1) or more required skills.
   b. The applicant shall demonstrate proficiency in all mandatory stations.

2. a. The second part shall consist of "wild card" stations in which one (1) or more skills shall be tested.
   b. The applicant shall randomly draw the skills on which he shall be tested at the time of the examination.

(a) If the applicant for certification fails to pass the written or oral portion of the examination, he shall be permitted one (1) opportunity to retake the portion or portions failed.

(b) The reexamination shall be conducted within sixty (60) days of the initial examination.

(5) If the applicant for certification fails to pass the written or oral portion after reexamination, he shall retake the entire MET training course before being eligible for subsequent examination.

Section 5. Certification Renewal, Re-certification, and Recertification, Continuing Education Requirements. (1)(a) For a MET to remain certified, the applicant shall receive continuing education or retraining in a period not to exceed one (1) year from the last day of the month in which the current retraining was completed.

(b) During the period of certification, a MET shall earn at least eight (8) continuing education or retraining hours annually, with at least (80% or less) being devoted to practical skills in a structured instructional setting.

(2) Continuing education and retraining courses for mine emergency technicians shall be taught by certified MET instructors.

(3)(a) A MET shall maintain a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR.

(b) The card shall be presented to the MET instructor at the time of the MET recertification.

(4) An applicant for recertification shall receive credit for completion of continuing education or retraining courses approved by the OSMI [department] of this MET curriculum listed in Section 3 of this administrative regulation.

(5) Each subject or training course for which credit is claimed shall be countersigned by the MET instructor teaching the subject or course.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different subject areas of the approved MET curriculum, with a minimum of two (2) hours per subject area.

(a) The MET shall submit the MET to the OSMI [department] office a copy of the Mine Emergency Technician Recertification form, EF-16, within thirty (30) days of the MET retraining completion dates if the eight (8) hours training was received from multiple locations.

(b) The Mine Emergency Technician Recertification form, EF-16, shall be signed by the MET, be endorsed with the MET instructor certification number, and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(c) A copy of the Mine Emergency Technician Recertification form, EF-16, shall be maintained at the mine site of the department, a record of his continuing education on a Mine Emergency Technician Recertification form, EF-16, which shall be signed by the MET, be endorsed with the MET instructor certification number and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(d) The MET shall maintain evidence of his MET recertification, on Form EF-16, at the mine site.

Section 6. Expiration of Certification. (1) A MET certification shall expire one (1) year from the last day of the month in which the certification was issued, unless the person holding the MET certification satisfies the recertification and continuing education requirements detailed in Section 5 of this administrative regulation.

(2) Upon the expiration of his or her certification, the holder shall not function in the capacity of a mine emergency technician.

Section 7. Reinstatement, Renewal, Re-certification, and Recertification, Continuing Education Requirements. (1) A MET may request an renewal or expired certification as follows:

(a) If the certificate has expired within the past one (1) year, the applicant may apply for certification reinstatement by:

(b) Providing a current CPR certification as established in Section 3(1)(a) of this administrative regulation;

(c) Submitting proof, in accordance with KRS 351.182, that the applicant is drug and alcohol free;

(d) Submitting proof of prior MET certification, which has been completed within the past eight (8) hours of MET training and reeducation classes.

(2) If the certificate has been expired for more than one (1) year but less than three (3) years, the applicant may apply for certification reinstatement by:

(a) Successfully completing eight (8) hours of MET training and reeducation classes as established in Section 5 of this administrative regulation;

(b) Providing a copy of current CPR certification as established in Section 3 of this administrative regulation;

(c) Submitting proof, in accordance with KRS 351.182, that he or she is drug and alcohol free;

(d) Submitting proof of prior MET certification, which has been completed within the past eight (8) hours of MET training and reeducation classes.

Section 8. Designation of a MET. (1) A person designated by
the licensee to function as a MET in an underground coal mine shall:
(a) Hold an underground miner's certification in the Commonwealth of Kentucky;
(b) Hold a mine emergency technician certification from OSML[department]; and
(c) Maintain verification of [his] MET certification at the mine site.
(2) A person designated by the licensee to function as a MET at a surface coal mine shall:
(a) Hold a surface miner's certification in the Commonwealth of Kentucky;
(b) Hold a mine emergency technician certification from the OSML[department], and
(c) Maintain verification of [his] MET certification at the mine site.
(3) A certified MET instructor designated by the licensee to function as a mine emergency technician shall:
(a) Meet the requirements of subsections (1)(a) or (2)(a) of this section;
(b) Maintain verification of [his] MET certification at the mine site; and
either
(e) Teach an eight (8) hour MET retraining class during the [the] period of certification; or
2.(d)(i) Meet the recertification continuing education requirements established in Section 5 of this administrative regulation.

Section 9. MET Instructor Certification Requirements. MET instructors, in addition to being certified as a MET, shall:
(1) Hold a mine instructor certification issued by the OSML[department];
(2) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) hour CPR issued by at least one (1) of the organizations listed in Section 5(1)(a) of this administrative regulation; and
(either
(3) Be an EMT instructor who is also qualified in accordance with subsections (1) and (2) of this section.

Section 10. Responsibilities of the MET Instructor. The MET instructor shall:
(1) Utilize equipment, texts, audio-visual and other materials deemed appropriate by the department;
(2) Notify the district office of the OSML[department] prior to his commencement of MET classes;
(3) Verify on a Mine Safety and Health Administration Certificate of Training Form, Federal Form 5000-23, that the MET applicant has successfully completed the standard MET program of training and education prescribed by the OSML[department]; and
(4) Verify on a Mine Emergency Technician Recertification Form, MET-Recertification Form, EF-16 that the MET has successfully completed each subject or training course for which credit shall [be] approved;
(5) Immediately upon completion of initial training or continuing education courses, the completed form, Mine Emergency Technical Recertification form, EF-16, shall be provided to the student and
(6)(a) Shall submit copies of all Mine Emergency Technician Recertification form, EF-16, forms within thirty (30) days of MET retraining completion dates, to the Office of Mine Safety and Licensing;
(b) The Mine Emergency Technician Recertification form, EF-16, shall be signed by the MET, endorsed with the MET Instructor certification number, and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

Section 11. Denial, Revocation, and Suspension of MET Certification. (1) The Mine Safety Review Commission[Mining Board] may, except on appeal, suspend, or withdraw the MET certification or MET instructor certification of a person who the commission[board] determines, based on allegations substantiated by the OSML[department], has responded or acted inappropriately in the mine safety office of a mine emergency technician or MET instructor by failing to:
(a) Follow appropriate standards of care in the management of a patient;
(b) Administer treatment in a responsible manner in accordance with the mine emergency technician or MET instructor level of certification;
(c) Maintain patient confidentiality;
(d) Respond promptly to an emergency;
(e) All actions taken by the commission[board] regarding the revocation, suspension, or probation of a MET certification or MET instructor certification shall be so taken in accordance with KRS 352.390.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) The Mine Safety and Health Administration Certificate of Training Form 5000-23, January 1999; and
(b) Mine Emergency Technician Recertification Course completion card in adult foreign body airway obstruction and adult one (1) hour and two (2) hour CPR.

(a) BRADY Basic First Responder Text, (1997), 1st edition, chapters 1, 23, and 25.
(b) Federal Form 6000-23.
(d) Form EF-16, April 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Office of Mine Safety and Licensing, branch offices in the offices of the Kentucky Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, P.O. Box 2244, Frankfort, Kentucky 40602-2244.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 7, 2008
FILED WITH LRC: November 12, 2008 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing December 15, 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 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 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Johnny Greene, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards by which mine emergency technicians (MET) shall be trained, certified, and retrained.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on the training, certifying, and retraining of mine emergency technicians.
(c) How this administrative regulation conforms to the content of the enabling statute: KRS 352.175(1) requires that a certified mine emergency medical technician or mine emergency technician be employed at every coal mine where employees are engaged in the extraction, production, or preparation of coal. This administrative regulation establishes the criteria for training, certifying MET.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS
351.127(1) requires the Department for Natural Resources to establish, by administrative regulation, a training program for the certification of Mine Emergency Technicians. KRS 351.127(5) requires the department to establish criteria, in administrative regulation, for and annual retraining program. This administrative regulation accomplishes these 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 amendment will update the criteria for the training and retraining of a MET.

(b) The necessity of the amendment to the administrative regulation: This amendment is necessary to update the criteria associated with the training and retraining of MET.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 351.127(1) requires that a certified emergency medical technician or mine emergency technician be employed at every coal mine where employees are engaged in the extraction, production, or preparation of coal. This amendment is necessary to update criteria related to training, retraining and certification of mine emergency technicians.

(d) How the amendment will assist the effective administration of the statutes: The amendment includes changes that will update the current requirements for the training, retraining and certification for METs.

(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 individuals that request certification as a mine emergency technician throughout the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation or amendment, 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 amendments contained within the administrative regulation will not amount to substantive changes. There are changes in training criteria pertaining to the type of CPR certification and a clarification of the number of classes and the timeframe they are to be completed in to maintain certification.

(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 costs associated with this administrative regulation to the entities listed in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will benefit by receiving updated training in the mine emergency technician program.

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

(a) Initially: There will be no additional costs associated with the implementation of this amendment.

(b) On a continuing basis. There will be no additional costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund dollars will be used to fund this program.

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

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

(9) TIERING: Is tiering applied? No. All applicants to the MET program are required to fulfill the same criteria for certification.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.127(1) requires the Department for Natural Resources to establish, by administrative regulation, a training program for the certification of Mine Emergency Technicians. KRS 351.127(5) requires the department to establish criteria, in administrative regulation, for and annual retraining program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. This regulation will not significantly affect expenditures or revenues.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The costs associated with this program are minimal. The proposed amendment will not introduce any additional costs due to updating the criteria for training.

(d) How much will it cost to administer this program for subsequent years? The costs associated with administering this program are minimal.

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

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

806 KAR 17:480. Uniform evaluation and reevaluation of providers.

RELATES TO: KRS 205.560(12), 2168.155(2), 304.17A-005, 304.17A-500, 304.17A-545, 304.17A-576(1)
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-545(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. KRS 304.17A-545(5) requires the executive director to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan's list of participating providers. This administrative regulation establishes the uniform application form and guidelines for evaluation and reevaluation of a health care provider, including a psychologist.

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

(a) "Evaluation" or "credentialing" means [a]:

(i) A process for collecting and verifying professional qualifications of a health care provider;

(ii) An assessment of [whether a health care provider meets specified criteria relating to] professional competence and conduct; and
(c) Process to be completed before a health care provider may participate in a provider network of an insurer on an initial or ongoing basis.

(3) "Executive director" is defined in KRS 304.1-560(4).

(4) "Form KAPER-1" means the uniform application for credentialing or recredentialing of a health care provider pursuant to KRS 304.17A-545(5).

(5) "Health care provider" or "provider" means:

(a) [A] Health care provider pursuant to KRS 304.17A-505(23); or

(b) [A] Psychologist licensed under KRS Chapter 319.

(6) "Insurer" is defined by [e] KRS 304.17A-505(27).

(7) "Managed care plan" is defined by [e] KRS 304.17A-500(9).

(8) "Office" is defined in KRS 304.1-060(2).

(9) "Participant health care provider" is defined by [e] KRS 304.17A-500(10).

(10) "Provider network" is defined by [e] KRS 304.17A-505(35).

(11) "Reevaluation" or "recredentialing" means a process for identifying a change in a health care provider which (a) may have occurred in a health care provider since the previous evaluation or credentialing; and (b) [that may] affect the health care provider's ability to perform contract services.

Section 3. Guidelines for an Insurer. (1) Except as established in subsection (3)(b)(4) of this section, an insurer which offers a managed care plan and performs credentialing or recredentialing activities shall use Form KAPER-1, Part A to credential or recredential a health care provider who desires participation in its provider network.

(2) Pursuant to subsection (3)(b)(4) of this section, an insurer shall:

(a) Have a mechanism for making available and accepting from a health care provider a handwritten or electronically submitted Form KAPER-1, Part A for:

1. Initial credentialing; and
2. Recredentialing; and
(b) Within thirty (30) days of receipt of a Form KAPER-1, Part A, electronically or in writing:

1. Inform the health care provider of receipt of the Form KAPER-1 and, if applicable, whether the form does or does not meet the requirements of KRS 304.17A-576(1)(a) [if any omitted or questionable information included on the form]; and
2. Offer assistance to the provider, if requested/applicable; and
(c) Within sixty (60) days of receipt of a Form KAPER-1, Part A, which includes all data elements required for processing, provide an electronic or written notification regarding the status of credentialing or recredentialing to the health care provider; and
(d) [Of-the-status-of-credentialing] This time period may be extended if, due to [extenuating] circumstances identified in KRS 304.17A-576(2):

(c) Additional time is required by the insurer to consider information submitted on the Form KAPER-1, Part A; and
(d) The health care provider is informed of the need for more time, including information relating to the [extenuating] circumstance, as referenced in KRS 304.17A-576(2), which caused the delay; and
(e) Not required to provide electronic or written notification as established in paragraph (c) of this subsection every thirty (30) days after the initial notification until a final determination regarding credentialing or recredentialing has been issued to the health care provider; and
(f) Be prohibited from requiring:

1. Information on the Form KAPER-1, Part A, which is not relevant to the scope of practice, health care setting, or service of the health care provider; and
2. Routine recredentialing of a health care provider more frequently than three (3) years from the previous credentialing date; and
(e) Upon making a final determination regarding credentialing or recredentialing of a health care provider in accordance with KRS 304.17A-576(1), provide notification of the determination to the health care provider.

(3) An insurer may use:

(a) Form KAPER-1, Part A to credential or recredential an individual in its provider network other than a health care provider; and

(b) An insurer may use the application form of the Council for Affordable Quality Healthcare as identified in the introduction of the Form KAPER-1, Part A, in lieu of the Form KAPER-1, Part A.


(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the Department of Insurance' Web site at http://insurance.ky.gov [http://doi.ppr.ky.gov].

SHARON CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 10, 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 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 31, 2008. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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) 564-2729.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who desire participation in the network of an insurer offering a managed care plan.

(b) The necessity of this administrative regulation: Pursuant to KRS 304.17A-545(5), the executive director is required to promulgate an administrative regulation to establish a uniform application and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers. This administrative regulation is necessary to fulfill this requirement.

(c) How this administrative regulation conforms to the content of the enabling statute: This administrative regulation conforms to KRS 304.17A-545(5), which authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, KRS 304.17A-545(5) authorizes the executive director to establish a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who will be on a managed care plan's list of participa-
pating providers. How this administrative regulation currently assists or will assist in the effective administration of this statute: This administrative regulation will assist in the effective administration of the statute by establishing an application and guidelines for credentialing and recredentialing of health care providers, which is required under KRS 304.17A-545(5), by insurers offering a managed care plan. This regulation will also clarify requirements of 2008 RS HB 440, Section 2(1), which requires insurers offering a managed care plan to notify an applicant of its determination relating to credentialing within ninety (90) days of receipt of the application.

(3) If 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 agency names in accordance with EO 2008-507, which established the Department, and conforms to requirements of 2008 RS HB 440, Section 2(1), relating to the timeline for credentialing health care providers. The amendment also deletes the requirements relating to notification of the status of credentialing beyond the first sixty (60) days following application, revises the incorporated material to reflect current credentialing practices, and makes minor revisions as required by KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to make changes to agency names, conform to the requirements of 2008 RS HB 440, Section 2(1), relating to the timeline for credentialing health care providers, and comply with the drafting requirements of KRS Chapters 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as added to the regulation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-545(5) authorizes the executive director to establish a uniform application form and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who will be on a managed care plan’s list of participating providers. 2008 RS HB 440, Section 2(1) requires an insurer offering a managed care plan to notify an applicant for credentialing of the final determination regarding the credentialing within ninety (90) days of submitting a complete application.

(d) How the amendment will assist in the effective administration of the statute: This amendment will assist in the effective administration of KRS 304.17A-545(5) by providing a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, who desire participation in a managed care plan, and will clarify the timeline for credentialing pursuant to 2008 RS HB 440, section 2(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects seven (7) insurers, which were identified as currently marketing managed care plans (health maintenance organizations) in Kentucky. Additionally, the regulation affects health care providers, who are currently required to submit a completed Kentucky uniform application for evaluation and reevaluation, Form KAPER-1, which is incorporated by reference and identified in KRS 205.500(12) and KRS 216B.155(2).

(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. Health insurers offering managed care plans will be required to notify a provider of the approval or disapproval of credentialing within (90) days as required by KRS 304.17A-576 and no longer be required to notify a health care provider of the status of credentialing beyond the first notice at sixty (60) days following application. The Insurers will also be provided with a credentialing application which reflects current credentialing practices. Additionally, the amendment includes technical information and makes clarifications relating to current credentialing requirements, which may streamline the credentialing process. Since most of the changes to Kentucky’s uniform application for credentialing and recredentialing (Form KAPER-1) are technical in nature, health care providers will be affected minimally.

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

(a) Initially: Since insurers and health care providers are currently required to use the Form KAPER-1 for credentialing, little if any costs are anticipated with the implementation of this administrative regulation.

(b) On a continuing basis: Since insurers and health care providers are currently required to use the Form KAPER-1 for credentialing, little if any costs are anticipated with the continuing implementation of this administrative regulation.

(c) 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 to implement and enforce 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.

(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees.

(f) TIERING: Is tiering applied? No, tiering does not apply because this administrative regulation is applied in the same manner to all insurers offering managed care plans and health care providers subject to credentialing 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)? If so, describe:

2. What 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 Cabinet for Health and Family Services, including the Department for Medicaid Services and Office of Inspector General, which is required to use the uniform application for evaluation (credentialing) and reevaluation (recredentialing), Form KAPER-1, which is incorporated by reference, and the 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 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 KRS 304.17A-545(5) requires the executive director to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan’s list of participating providers. 2008 RS HB 440, Section 2(1) limits the timeframes for insurer credentialing or recredentialing.

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

(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is anticipated that this regulation will 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? It is anticipated that this regulation will remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? It is anticipated that this regulation will be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that this regulation will be essentially revenue neutral.

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing (Amendment)

810 KAR 1:025. Licensing thoroughbred racing.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. This administrative regulation establishes the criteria under which thoroughbred racing shall be conducted in Kentucky. The function of the administrative regulation is to establish the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. Definitions. (1) "Person" means an individual, proprietor, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessee, lessor, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission. License categories shall include the following:

(a) Racing participants and personnel including the following: owner, authorized agent, trainer, assistant trainer, jockey, apprentice jockey, jockey agent, farm manager or agent, veterinarian, veterinary technologist or technician, veterinarian assistant, farrier, vendor, mutual clerk, exercise rider, stable employee, and any employee listed in Section 5 of this administrative regulation.

(b) Racing officials.

(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing patrons, with job duties which require their presence anywhere on association grounds; and

(d) Commission employees with job duties which require their presence anywhere on association grounds; and

(2) Commission members.

(3) License applications for associations. A person or other legal entity desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. An application shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:

(a) The name and address of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;

(b) The name and address of persons capable of exercising any control over affairs of the association as trustee or guardian or lessee, or mortgagee, or fiduciary;

(c) If the applicant is a corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, the applicant shall file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entity with the degree of ownership or type of interest pertaining to the ownership or interest;

(d) The names of racing officials and persons responsible for track security and fire protection;

(e) The proposed race schedule showing minimum purse, average daily distribution, added money for each stake, if any; and

(3) The commission shall require a person working at a facility which provides information concerning timed public works to obtain a valid license issued by the commission. The executive director, chief racing steward, or their designee may refuse entry or scratch any horse involving any person who, after requested to provide a valid license, fails or is unable to obtain the license.

(4) A person required to be licensed shall submit a completed written application on the form "Licensing Application" (KHRF 25-01 (10/08)) or the Multi-Jurisdictional License Form, along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of an owner in accordance with Section 10 of this administrative regulation. A conditional or probationary license may be issued by the executive director, chief racing steward, or Director of Licensing upon submission of a written application.

Section 3. General License Application Requirements for All Applicants. (1) Any person other than an association, required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.

(2) The application shall be made in writing on application forms and in the manner prescribed by the commission, including presentation of appropriate photo identification. An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 10 of this administrative regulation. The license application shall be reviewed and issued by commission personnel. The executive director, the chief steward, or the Director of Licensing shall have the authority to personally review license applications. A license application if the application is incomplete or if refusal or denial is appropriate pursuant to Section 10 of this administrative regulation.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his agent shall result in an immediate license suspension, revocation, refusal, denial, or imposition of a fine by the commission or the Chief Racing Steward.

(4) An application from a person whose age is not readily ascertainable by commission staff shall be accompanied by an attested copy of a birth certificate or work permit showing the applicant is sixteen (16) years of age or older.

(a) An applicant for licensing shall be a minimum of sixteen (16) years of age unless otherwise specified in these regulations. An applicant may be required to submit a certified copy of his or
her birth certificate. Persons under the age of eighteen (18) may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(b) The commission may grant an owner’s license to a person less than sixteen (16) years of age if the person’s parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant’s parent or legal guardian in the presence of one (1) or more of the stewards.

(5) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present orreversionary interest in the horses.

(6) The commission shall provide notice to an applicant that the license application has been issued, denied, or renewed. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An application from a person desiring to work on association grounds as a veterinary technician or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technician or veterinarian technician by the Commonwealth of Kentucky, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 521.

(b) An application from a person desiring to work on association grounds as a veterinary technician or veterinary technician shall be accompanied by evidence that the person is currently registered as a veterinary technician or veterinarian technician by the Commonwealth of Kentucky, and KHRA Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him or her as required by KRS Chapter 521.

(2) Farmers. An application from a person not previously licensed in the capacity of farmer shall submit a diploma of other document satisfying successful completion of a recognized farmer course or examination, or submit a letter of recommendation from an experienced farmer known to the stewards.

(3) Stable employees, occupational employees, vendor employees. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit to KHRA Form 25-4, from his or her employer verifying employment and workers’ compensation coverage.

(4) Special event licensees. A special event license shall be issued to employees who are employed by an association only for the duration of a special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable:

(a) $150 - owner, trainer, assistant trainer, veterinarian, jockey, jockey agent, claiming license, and temporary license;

(b) $100 - racing secretary, assistant racing secretary, director of races, starter, assistant starter, paddock judge, patrol judge, placing judge, timer, jockey apprentice, farrier, steward, testing laboratory employee, racing department employee, valet, and outrider;

(c) Fifty ($50) dollars - veterinary assistant, veterinary technician, veterinarian technologist, vendor, mutual employee, farm manager, farm agent;

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, or any person employed by a commercial operation to provide a service or commodity and which employment requires that person’s presence on association grounds during a race meeting; horse identifier, photo finish operator, film patrol crew member, television production employee, member of an association security department (including a policeman, watchmen, fireman, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager or his or her employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association;

(e) Ten ($10) dollars - exercise rider, special event mutual, special event occupational, or special event vendor employee, stable employee, including but not limited to stable foreman, exercise personnel, hotwalker, groom, watchman, pony person.

(2) A replacement fee for a duplicate license shall be ten ($10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting. A license applicant may be required to furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multistate/National Licenses. In lieu of a license application from the jurisdiction, the commission may accept an ARCI Multi-State License and Information Form and the National Racing Compact form and license if these forms ensure compliance with all licensing requirements in this administrative regulation. A license applicant shall be required to pay the fee prescribed in Section 5 of this administrative regulation, in addition to any fee which may be prescribed by ARCI or NRBC.

Section 9. Consent To Investigate by License Applicants and Licensees. The filing of an application for a license shall authorize the commission to do the following:

(1) Investigate the criminal background, employment history, and racing history record of the applicant.

(2) Engage in research and interviews to determine the applicant’s character and qualifications.

(3) Verify information provided by the applicant.

Section 9. Consent To Search and Seizure by Licensees. (1) By acceptance of a license, a licensee consents to search and inspection by the commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or KAR Title 8 or Title 811 of the Kentucky administrative regulations.

(2)(a) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tackling rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort at any location under the jurisdiction of the commission.

(b) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly and to the best of his or her knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(d) A licensee shall consent to out-of-competition testing at any time or place designated by the commission.

Section 10. Approval or Recommendations by Steward. The commission may designate certain categories of licenses which shall require the prior approval or recommendation of the stewards. If a license application does not meet any established category, the application shall be submitted to the executive director, chief racing steward, or Director of Licensing.

Section 11. Employer Responsibility. (1) The employment or hiring of any unlicensed person at a facility under the jurisdiction of the commission is prohibited, and may subject an employer to license suspension, denial, revocation, or other appropriate
penalty under KRS Chapter 230, or KAR Title 810 or Title 811 of the Kentucky administrative regulations.

(2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.

(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(4) The license application of an employee shall be signed by the employer.

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 12. Financial Responsibility. An applicant for a license may be required to submit evidence of financial responsibility to the commission and shall maintain financial responsibility during the period for which the license is issued. A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of his or her licensed occupation, constitutes a failure to meet the financial responsibility requirements of KFS 230.310. If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked by the stewards until the licensee provides written documentation of satisfaction of the judgment to the stewards.

Section 13. Voluntary Withdrawal of License Application. A license applicant may withdraw his or her license application from the review process. If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice. The stewards shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the Association of Racing Commissioners International.

Section 14. License Review Committee. (1) The executive director, chief racing steward, or Director of Licensing may refer a license applicant to the License Review Committee in lieu of license denial or issuance.

(2) The License Review Committee shall be comprised of the executive director or his or her designee, the Director of Licensing or his or her designee, the Chief State Steward or his or her designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then no license shall be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4) The denial or refusal of the application shall be subject to appeal to an administrative hearing in accordance with KRS Chap. 13B.

(5) In the alternative, the commission, the License Review Committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 15. License Denial, Revocation, or Suspension. (1) The commission, executive director, chief racing steward, or Director of Licensing may refuse or deny a license application, and the commission or Chief State Steward may suspend or revoke a license, or otherwise penalize a licensee, or other person, for any of the following reasons:

(a) The public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering may be adversely affected if the license is issued;

(b) The licensee or applicant has been convicted of a felony or misdemeanor within ten (10) years preceding the date of submission of a license application with the commission;

(c) The licensee or applicant has had a license issued by the locally constituted racing or training commission of a state, province, or country denied, suspended, or revoked for violation of a statute, administrative regulation, or other rule;

(d) The licensee or applicant is presently under suspension of a license by the locally constituted racing commission of a state, province, or country;

(e) The licensee or applicant has had a license issued by the Commonwealth of Kentucky revoked, suspended, or denied;

(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsehood, or omission of information in an application for a license;

(h) The licensee or applicant has been elected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or other rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has permitted or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the pre-arrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards;

(l) The licensee or applicant has demonstrated financial irresponsibility by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid;

(m) The licensee or applicant has failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(o) The licensee or applicant has been charged with criminal conduct;

(p) The licensee or applicant has been convicted of a crime involving bookmaking, racing, or similar pursuits or has consorted with a person convicted of such an offense;

(q) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe, favor, or gift, directly or indirectly, or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the stewards;

(r) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(s) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;

(t) The licensee or applicant has entered, or aided and abetted the entry, of a horse ineligible or disqualified for the race entered;

(u) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward, 1. A firearm; or 2. Any other appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;

(v) The licensee or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 230 or 810 KAR 100;

(w) The licensee or applicant has failed to comply with a written order or ruling of the Authority, the stewards, or the judges pertaining to a racing matter or investigation;

(x) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(y) The licensee or applicant has failed to return to an associa-
tion any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(b) The licensee or applicant has been intoxicated, used profanity, or engaged in fighting or any conduct of a disorderly nature on association grounds;

(c) The license or applicant has used profane, abusive, or insulting language to or interfered with a commission member, commission employee or agent, or racing official, while these persons are in the course of discharging their duties;

(d) The licensee or applicant has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official duties;

(e) The name of the licensee or applicant appears on the Commonwealth of Kentucky Revenue Cabinet’s most recent tax warrant list, and the licensee or applicant’s delinquent tax liability has not been satisfied;

(f) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(g) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(h) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(i) The licensee or applicant has failed to pay a required fee or tax, or has otherwise failed to comply with Kentucky statutes or administrative regulations;

(j) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the Chief State Racing Steward;

(k) The licensee or applicant has failed to advise the commission of changes in the information as required by Section 17 of this administrative regulation;

(l) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;

(m) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;

(n) The licensee or applicant has aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;

(o) The licensee or applicant has employed or harbored an unlicensed person required by these administrative regulations to be licensed;

(p) The licensee or applicant, being a person other than a licensed or certified veterinarian, has possessed on association grounds:

1. A hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by 810 KAR 018, Section 3(6);

2. A medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission;

(q) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge;

(r) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial;

(s) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS Chapter 139.

Section 16. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled out, excluded, or elected from a racetrack in Kentucky or another jurisdiction, the commission may require reinstatement at that track before a license shall be granted by the commission.

Section 17. Changes in Application Information. (1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license application. Including the following:

(a) Current legal name;

(b) Marital status;

(c) Permanent address;

(d) Pending criminal complaints;

(e) Criminal convictions;

(f) License denials and license suspensions of ten (10) days or more in other jurisdictions;

(g) License revocations or fines of $500 or more in other jurisdictions;

(h) Racing related disciplinary charges pending in other jurisdictions;

(i) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction;

(j) A change in application information shall be submitted in writing upon the appropriate commission form, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change.

Section 18. Temporary Licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or an application for a temporary license on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. Failure by the applicant to supply a name, social security number, and mailing address for a temporary license is grounds for refusal. A temporary license shall be valid for more than thirty (30) days from the date of issuance and shall automatically lapse after the thirtieth day pending completion of all licensing procedures. Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended and the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except as prohibited by Section 20 of this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest. (1) The License Review Committee and the chief state steward or their designees shall deny or refuse to process the license of a person, and the commission or the chief state steward shall revoke or suspend the license of a person, whose spouse, immediate family member, or other person in a close relationship holds a license which the License Review Committee or chief state steward find to be a conflict of interest. A finding of a conflict of interest may be appealed to the commission pursuant to KRS Chapter 139.

(2) A racing official who is an owner of either the sire or dam of a horse entered in a race shall not act as an official during that race.

(3) A person who is licensed as an owner, trainer, or has any financial interest in a horse entered in a race, shall not be employed or licensed in that race as any of the following:

(a) Racing official;

(b) Assistant starter;

(c) Racing veterinarian;

(d) Veterinary technician/veterinary technologist;

(e) Officer or manager employee;

(f) Track maintenance supervisor or employee;

(g) Outiner;

(h) Race track security employee;

(i) Farmer;

(j) Photo finish operator;

(k) Horsemanship bookkeeper;

(l) Racing chemist;

(m) Testing laboratory employee;

(n) Jockey;

(o) Apprentice jockey;

(p) Jockey agent;

(q) Veterinary technicians and veterinary assistants shall not be licensed in any other capacity that allows access to the stable.
Section 21. License, Photo Identification Badge. (1) If a licensee desists access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The stewards or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards, the commission Director of Security or Director of Licensing, or their designees, upon request.

Section 22. Duties of Licensees. (1) A licensee shall be knowledgeable of these administrative regulations and, by acceptance of the license, agrees to abide by these administrative regulations.

(2) A licensee shall report to track security or the stewards any knowledge the licensee has that a violation of these rules has occurred or may occur.

(3) A licensee shall abide by all rules and decisions of the stewards and the commission, and all decisions by the stewards and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 239.330.

(4) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:
(a) Findings of fact as occurred during and incident to the running of a race; and
(b) A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(5) A licensee shall cooperate fully with all investigators and inquiries made by commission representatives or association security or both.

(6) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any knowledge or suspected irregularities, any violation of the rules of the commission, or any wrongdoings by any person, and shall cooperate in any subsequent investigation.

Section 23. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to elect or exclude persons, licensed or unlicensed, from association grounds.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference.

(a) "Licensing Application Form", KHRC 25-01, 10/08;
(b) "Licensing Owners/Control Form", KHRC 25-02, 10/08;
(c) "Change in License Information Form", KHRC 25-03, 10/08;
(d) "Verification of Employment and Workers Compensation Form", KHRC 25-04, 10/08;
(e) "Termination of Stable Employee Form", KHRC 25-05, 10/08;
(f) "Race Track License Application", KRC-16, 12/01; and
(g) "Corporate Disclosure Form", KRC-17, 12/01.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4952 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m., or can be viewed at www.khrc.com.

Section 1-1. (1) Information provided on or with license application shall be complete and correct.

(2) A licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless reversed or modified by the commission upon proper appeal.

(a) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:
(i) Findings of fact as occurred during and incident to the running of a race; and
(ii) A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(b) Excepted rulings and decisions by the stewards shall be final with no right of review by the commission.

(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being associated to that on association grounds and including: tack rooms, living or sleeping quarters, motor vehicles, trucks, boxes, and containers of any sort.

(b) Licensee shall consent to seizure of any object which may be evidence, indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.

(b) Upon a finding of a positive test result for a prohibited medication, stimulant, sedative, depressant, local anesthetic, or any foreign substance, in a stable, urine, blood, or other specimen taken from a horse, the trainer of the horse shall be held responsible for the test results unless the trainer can establish that the stimulant, sedative, depressant, local anesthetic, or any foreign substance was administered to the horse by another person.

Section 25. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or may exercise any other disciplinary measure, on the following grounds:

(a) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked;
(b) Conviction of a crime or violation of any statute or administrative regulation;
(c) Falsehood, misrepresentation, or omission of required information in a license application to the commission;
(d) Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or
(e) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;
(f) Making false or misleading statements to the commission or the stewards in an application for a license or in the course of an investigation;
(g) Failure to comply with any order or ruling of the commission, stewards, or racetrack officials;
(h) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, betting-relief, or illegal enterprise, or association with any person so engaged in these activities;
(i) Applying for an receiving a license by a person less than sixteen (16) years of age;
(j) Being incompetent or unqualified in the performance of the activity for which the license is granted or determined by standard executive opinion, present or future, by the stewards;
(k) Intoxication, use of profanity, fighting, or any conduct of a disorderly nature on association grounds;
(l) Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;
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Section 5. License Application for Participants in Racing.—(1) Any person other than an association required to be licensed by Section 1 of this administrative regulation and dealing-to-participating thoroughbred horses in the Commonwealth may apply to the commission for a license.

(b) The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association office on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after application arrived on association's premises.

(2) An application from a person not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) An application from a person whose age is not readily ascertainable by the licensing committee shall be accompanied by an attached copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) (a) An application from a person, corporation, partnership, lessor, or other entity involving more than one (1) individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horse, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own a control, present or revocatory interest in the horse.

(b) An application shall not be acted upon by the commission until the commission has satisfied a full disclosure has been made.

(5) (a) An application from persons dealing to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may, with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall be considered as participating in racing in that state.

(6) An application from a person desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.

(7) An application from a person not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.

(8) The following annual fees shall accompany the application and shall not be refunded:

(a) $100—owner, trainer, assistant trainer, veterinarian, farrier, apprentice—farrier, jockey, jockey agent, racing official, steward, testing laboratory employee, racing department employee, racing secretary, assistant racing secretary, director of racing, starter, and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license.

(b) Seventy-five ($75) dollars—assistant; (c) Fifty ($50) dollars—veterinarian assistant, dental technician, stable area supplier license (for suppliers of horse feed, tack, medicine, or food vendors), mutual employee, farm manager, farm agent;

(d) Twenty-five ($25) dollars—association employee, occupational employee, vendor employee, or any person employed by a company controlling, or otherwise affiliated with, a trainer or commodity and which employment requires their presence on association grounds during a race meeting, photo finish operator, film operator, etc.
patrol, television production employees, association security department including police, firemen, ambulance drivers, emergency medical technicians, track superintendents, maintenance department staff, admissions department manager and employees, association concessions manager and employees, parking manager, and employees, all other persons employed by the association;

(d) Ten (10) dollars—special event mutual-employee license

1. Stable foreman, exercise personnel, hotwalker, groom, watchman, pony-person; and

2. Special event mutual-employee license which shall be valid for the day of the event only.

(5) The fee for a duplicate license shall be ten (10) dollars.

Section 6. Licensing Committee. (1) The commission may appoint a licensing committee which may include the executive director and commission steward or their designated representative.

(2) The licensing committee shall review all applications for all licenses, and forward the applications to the commission with recommendations, subject to scrutiny, checks, for final action.

Section 7. The validity of a license does not preclude or infringe upon the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds

Section 8. Possession of License Required. A person required to be licensed by this administrative regulation shall not participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license and having the license in his possession.

Section 9. Incorporation by Reference. (1) The following materials are incorporated by reference into this administrative regulation:

(a) "Licensing Application" (KRC 410801);

(b) "Race Track License Application" (KRC 140801);

(c) "Corporate Disclosure Form" (KRC 410801); and

(d) "Corporation" (KRC 410801).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 31, 2008
FILED WITH LRC: November 3, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 29, 2006, at 10 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by December 22, 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 31, 2008. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, 810 KAR 1:025 governs the licensing of individual participants in thoroughbred horse racing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for thoroughbred racing and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred licensing pursuant to KRS 230.215(2) and KRS 230.250(3) which authorize the Commission to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.250 and KRS 230.310 provide statutory criteria for the licensing of participants in Kentucky racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation prescribes the conditions upon which licenses may be granted by the Commission.

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

(a) The amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, in sure that there is adequate funding for operational costs of the Commission. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the licensing standards for thoroughbred racing, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding thoroughbred licenses.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 17,000 thoroughbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, jockeys, stable employees, veterinary personnel, racing officials, fans, vendors, agents, mutual clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $150 will apply to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians. This fee increase will affect approximately 8,000 license applicants in these categories.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All will file an updated application in the 2009 licensing year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no additional costs to comply with the updates to the licensing regulations. There will be a fifty (50) dollars increase in licensing fees to owners, trainers, assistant trainers, jockeys, jockey agents, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from
better notice to them of the qualifications to obtain a license, and of the licensing procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation. It is estimated that there will be no new costs to the agency associated with these amendments.

(a) Initially: N/A
(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Operational budget of KHRC.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation will not require an increase in fees, except as described in (4).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in (4).

(b) Tiering: Tiering does not apply because the updates in the licensing regulation shall apply to all participants in horse racing equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts) being impacted by this administrative regulation? Kentucky Horse Racing Commission.

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.250(3), 230.290 and 230.310.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the full year the administrative regulation is to be in effect. Will increase funding for thoroughbred racing by approximately $400,000.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? See above.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See above.
(c) How much will it cost to administer this program for the first year? No additional costs.
(d) How much will it cost to administer this program for subsequent years? N/A

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Licensing
(Amendment)

811 KAR 1:070. Licensing standardbred racing; owners, drivers, trainers, and groom.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), requires the commission the authority to regulate conditions under which standardbred racing shall be conducted in Ky.

This administrative regulation establishes licensing procedures and requirements for participation in standardbred racing. It regulates conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, and grooms.

Section 1. Definitions. (1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, association, club, committee, organization, lessee, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to be Licensed. (1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission. In addition, owners, owner/trainers, owner/driver, owner/trainers/driver, trainers, drivers, driver/trainers, shall also have a valid license issued by the United States Trotting Association. Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky. License categories shall include the following and others may be established by the commission:

(a) Racing participants and personnel including the following: owner, owner/trainer, owner/driver, owner/trainer/driver, driver, authorized agent, trainer, assistant trainer, driver, farm manager or agent, veterinarian, veterinary technologist or technician, veterinarian assistant, farmer, vendor, mutual clerk, stable employee, and any employee listed in Section 5 of this administrative regulation.

(b) Racing officials:
(c) Persons employed by the association, or employed by a person or concern contracting with or approved by the association or commission to provide a service or commodity associated with racing or racing patrons, with job duties which require their presence anywhere on association grounds while pari-mutuel wagering is being conducted.

(d) Sole proprietors, independent contractors, and all partners of a partnership contracting with or approved by the association or commission to provide a service or commodity on association grounds;

(e) Commission employees with job duties which require their presence anywhere on association grounds; and
(f) Commission members.

(2) Lessors and lessees. Any horse under lease shall race in the name of the lessee and a copy of such lease shall be filed with the clerk of course. A horse shall not race under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor shall be licensed by the commission prior to post. Persons violating this administrative regulation may be fined, suspended, or expelled by the commission or presiding judge.

(3) The commission shall require a person working at a facility which provides information concerning timed pari-mutuel wagering races to obtain a valid license issued by the commission. The executive director, presiding judge, or their designees may refuse entry or scratch any horse involving any person who, after requested to obtain a valid license, fails to or is unable to obtain a license.

(4) A person required to be licensed shall submit a completed written application on the form "Licensing Application" (KHRC 25-01 [10/03]) or the Multi-Jurisdictional License Form, along with the fee required by Section 5 of this administrative regulation. A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation. A conditional or probationary license may be issued by the executive director, presiding judge, or Director of Licensing upon submission of a written application.

Section 3. General License Application Requirements for All
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Applicants. (1) Any person, other than an association, required to be licensed by Section 2 of this administrative regulation and desiring to participate in standardized racing in the Commonwealth may apply to the commission for a license.

(2) The application shall be made in writing on application forms provided in the name or behalf of the commission, including presentation of appropriate photo identification. An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force. An application shall be submitted not later than twenty-four (24) hours after an applicant has arrived on association grounds, unless a temporary license is obtained in accordance with Section 18 of this administrative regulation. The license application shall be reviewed and issued by commission personnel. The executive director, the presiding judge, or the director of licensing shall have the authority to personally review and refuse or deny a license application if the application is incomplete or if refusal or denial is appropriate pursuant to Section 15 of this administrative regulation.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license suspension, revocation, refusal, denial, or imposition of a fine by the commission or the presiding judge.

(4) An application from a person whose age is not readily ascertainable by commission staff shall be accompanied by an attested copy of a birth certificate or work permit showing the applicant is sixteen (16) years of age or older. An applicant for licensing shall be a minimum of sixteen (16) years of age unless otherwise specified in these administrative regulations. An applicant may be required to submit a certified copy of his or her birth certificate. Persons under the age of eighteen (18) may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(5) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the judges.

(6) An application from a person or entity consisting of more than one (1) individual person desiring to race horses in the commonwealth shall, upon request, in addition to Designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(7) The commission shall provide notice to an applicant that the application has been submitted for review and may be required to submit additional documentation or respond to requests for information. If all requirements for licensing are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Specific Licenses. (1) Driver. A person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association, Standardbred Canada, or an appropriate international harness racing governing agency. Both licenses shall be presented to the clerk of course before driving. Pending issuance of a valid license by the United States Trotting Association, the commission may, at its discretion, issue a provisional or full driver's license to an applicant who qualifies under this administrative regulation.

(2) A person sixty (60) years of age or older who has never held any type of driver's license previously shall not be eligible for a driver license.

(3) General qualifications for a provisional "(P)" and full "(A)" driver's license. An applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission shall meet the following requirements:

(a) The applicant shall not have been convicted of a crime described in KRS 353B 010(4), or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.

(b) The applicant shall submit evidence of his or her ability to drive in a race and, if he or she is a new applicant, evidence shall include the equivalent of one (1) year's training experience.

(c) The applicant shall be at least eighteen (18) years of age.

(d) The applicant shall furnish a completed application form.

(e) The applicant shall submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes or, if one (1) eye is blind, at least 20/20 corrected vision in the other eye and upon request, shall submit evidence of physical and mental ability or submit to a physical examination.

(f) When requested by the presiding judge or his or her designee, a license applicant may be required to satisfactorily complete in the discretion of the presiding judge a written examination at a designated time and place to determine his or her qualifications to drive and his or her knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to a written test, shall be required to satisfactorily complete in the discretion of the presiding judge a written test before becoming eligible to obtain a license in a higher category.

(4) Special qualifications for professional "(P)" driver licenses.

(a) A provisional driver license valid only for participation at fairs, ratlines, qualifying races, and extended pan-mutuel meetings may be issued by the commission if the applicant meets the following qualifications:

1. The applicant has obtained at least twelve (12) satisfactory qualifying drives within a consecutive twelve (12) month period, or fifteen (15) satisfactory qualifying drives within a two (2) year period; and
2. The applicant has received the approval of the presiding judge and the District Six Track Committee.

(b) An amateur race conducted at an extended pari-mutuel track may be considered as a qualifying drive.

(c) A driver holding a qualifying-fair license shall not be considered for advancement to a professional license until he or she has had at least six (6) months driving experience while holding a qualifying-fair license, or has had at least three (3) months driving experience while holding a qualifying-fair license and twenty-four (24) satisfactory qualifying drives, and he or she has the unanimous consent of the presiding judge and the District Six Track Committee.

(d) At the discretion of the presiding judge, a qualifying driver who has had satisfactory drives at fairs or in amateur races conducted at county fairs may be given credit for not more than three-fourths of those drives toward the requisite number of qualifying drives required for advancement to a professional license.

(e) In determining an applicant's qualifications for a professional license, the presiding judge shall consider each qualifying drive and shall not require that the entire application be reviewed and determined solely upon the failure of the horse to go in qualifying time.

(f) The presiding judge and the District Six Track Committee shall examine the applicant's ability to harness and equip a horse properly and to establish his or her proficiency in handling the animal.

(c) Upon satisfactory recommendations from both the presiding judge and the District Six Track Committee the applicant shall be granted a provisional license for a probationary term of fifteen (15) pan-mutuel starts.

(b) Upon satisfactory completion of the probationary pan-mutuel races as described above, and with the approval of the presiding judge, a provisional license shall be issued by the commission.

(d) Special qualifications for full "(A)" driver license. A full license valid for all race meetings may be issued by the commission if the applicant meets the following qualifications:

(a) Driving experience. The applicant meets one of the following experience criteria:

1. The applicant has had at least one (1) year of driving experience while holding a provisional driver license, as well as twenty-five (25) satisfactory pan-mutuel starts in the twelve (12) month period beginning with the issuance of the provisional license.

2. The applicant had less than one (1) year of driving experience while holding a provisional driver license, but made at least fifty (50) satisfactory pan-mutuel starts; or

3. The applicant made twenty-five (25) satisfactory extended
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(2) Win requirement. The applicant shall have at least ten (10) wins at extended pan-mutual meetings while holding a provisory license or shall have at least five (5) wins at extended pan-mutual meetings while holding a provisional license and obtain the unanimous consent of the presiding judge and the District Six Track Committee.

(6) Trainer. An applicant for a trainer license shall show proof that he or she is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in Rule 611.4 and 611.69 and KAR 1, 09-00-00. Trainer applicants must be Magnolia assigned. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

(7) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician, shall be accompanied by evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky (299K Form 25-4 signed by a practicing veterinarian certifying that the applicant is working for the veterinarian as required by KRS Chapter 292).

(c) An application from a veterinary assistant shall be accompanied by a KHRC Form 25-4 signed by a licensed veterinarian certifying that the applicant is employed by him or her as required by KRS Chapter 292.

(3) Farmee. An application from a person not previously licensed in the capacity of farmer shall submit a diploma or other document signifying successful completion of a recognized farmer course or examination, or submit a letter of recommendation from an experienced farmer known to the judges.

(9) Stable employees, occupational employees, vendor employee. In order to obtain a stable employee, occupational employee, or vendor employee license, the license applicant shall submit a KHRC Form 25-4 from his or her employer verifying employment and workers’ compensation coverage.

(10) Special event licenses. A special event license shall be issued to employees who are employed by an association only for the duration of a special event. A special event license shall be valid for the days of the event only, and the duration of the license shall not exceed three (3) calendar days.

Section 5. Licensing Fees. (1) The following annual fees shall accompany the application and shall not be refundable:

(a) $125 - owner, trainer, driver, owner-trainer/driver, owner-driver, driver/trainer, owner/trainer, assistant trainer, veterinarian, claiming license, and temporary license.

(b) $100 - racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, patrol judge, racing judge, timer, farrier, judge, clerk of course, charter, testing laboratory employee, racing department employee, valet, and outrider.

(c) Fifty (50) dollars - veterinary assistant, veterinary technologist, veterinarian, veterinary technologist, vendor, mutual employee, farm manager, farm agent.

(d) Twenty-five (25) dollars - association employee, occupational employee, vendor employee, or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires that person’s presence on association grounds during a race meeting; photo finish operator, film patrol crew member, television production employees, members of an association security department (including a police, firemen, ambulance driver, or emergency medical technician), track superintendent, member of maintenance department staff, admissions department manager or his or her employee, association concessions manager and employee, parking manager and employee, and all other persons employed by the association.

(e) Ten (10) dollars - special event mutual, special event occupational, or special event vendor employee, including but not limited to stable foreman, exercise personnel, hotwalker, groom, watchman, pony person.

(f) Five (5) dollars - stable employee.

(2) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 6. Fingerprinting. A license applicant may be required to furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license. If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 7. Multi-state/National licenses. In lieu of a license application from this jurisdiction, the commission may accept an ARCI Multi-State license and Information Form and the National Racing Compact form and license if these forms ensure compliance with all licensing requirements in this administrative regulation. A license applicant shall be required to pay the fee prescribed in Section 5 of this administrative regulation, in addition to any fee which may be prescribed by ARCI or NRC.

Section 8. Consent to Investigate. Consent to Investigate by License Applicants and Licensees. The filing of an application for a license shall authorize the commission to do the following:

(1) Investigate the criminal background, employment history, and racing history of the applicant.

(2) Engage in research and interviews to determine the applicants’ character and qualifications.

(3) Verify information provided by the applicant.

Section 9. Consent to Search and Seizure by Licensees. (1) By acceptance of a license, a licensees consents to search and inspection by the commission or its agents at any location described in KRS 230.260(2), including any training facility, and to the seizure of any prohibited medication, controlled substance, paraphernalia, or device in violation of state or federal law or KAR Title 810 or Title 811 of the Kentucky administrative regulations.

(a) A licensee shall consent to a reasonable search of the property in his or her possession by the commission or its representatives, including tack, stables, living or sleeping quarters, motor vehicles, stalls, boxes, and any other area of any kind at any location under the jurisdiction of the commission.

(b) A licensee shall consent to the seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly to the best of his or her knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(d) A licensee shall consent to out-of-competition testing at any time or place designated by the commission.

Section 10. Approval or Recommendations by Judges. The commission may designate certain categories of licenses which shall require the prior approval or recommendation of the presiding judge. If a license application does not match any established category, the application shall be submitted to the executive director, presiding judge, or Director of Licensing.

Section 11. Employer Responsibility. (1) The employment or barring of any unlicensed person at a facility under the jurisdiction of the commission is prohibited, and may subject an employer to license suspension, denial, revocation, or other appropriate penalty under KRS Chapter 230, or KAR Title 810 or Title 811 of the Kentucky administrative regulations.

(2) Every employer shall report in writing to the commission or
its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee’s name, occupation, and reason for the discharge.

(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(4) The license application of an employee shall be signed by the employer.

(5) A licensed employer shall carry workers’ compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 12. Financial Responsibility. An applicant for a license may be required to submit evidence of financial responsibility to the commission in the form of a financial surety bond, bond, letter of credit, or financial guarantee, in an amount and for a period of time that the commission may establish. The license fee shall satisfy a judgment rendered against him or her by a Kentucky court or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of his or her licensed occupation, constitutes a failure to meet the financial requirements of KRS 239.310. If the license fee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked by the presiding judge until the licensee provides written documentation of satisfaction of the judgment to the presiding judge.

Section 13. Voluntary Withdrawal of License Application. A license applicant may with the approval of the license review committee voluntarily withdraw his or her application. The applicant is responsible for all review processes. If the applicant chooses to voluntarily withdraw his or her application, then this withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice. The stawards shall issue a ruling noting the withdrawal, and the ruling shall be communicated to the Association of Racing Commissioners International.

Section 14. License Review Committee. (1) The executive director, presiding judge, or Director of Licensing may refer a license applicant to the License Review Committee in lieu of license denial or issuance.

(2) The License Review Committee shall be composed of the executive director or his or her designee, the Director of Licensing or his or her designee, the presiding judge or his or her designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then no license shall be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4) The denial of the application shall be subject to appeal to an administrative hearing in accordance with KRS Chapter 13B, in the alternative, the commission, the License Review Committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 15. License Denial, Revocation, or Suspension

(1) The license denial, revocation, or suspension of a license applicant or license holder may be suspended or revoked by the presiding judge, or Director of Licensing, or suspended or revoked in an agreement with a person convicted of an offense.

(a) The license or applicant has been convicted of a felony or misdemeanor within ten (10) years preceding the date of submission of a license application with the commission;

(b) The license or applicant has been convicted of a felony or misdemeanor within ten (10) years preceding the date of submission of a license application with the commission;

(c) The license or applicant has been convicted of a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked for violation of a statute, administrative regulation, or other rule;

(d) The license or applicant is presently under suspension of a license by the legally constituted racing commission of a state, province, or country;

(e) The license or applicant has had a license issued by the Commonwealth of Kentucky revoked, suspended, or denied;

(f) The license or applicant has applied and received a license at less than sixty (60) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The license or applicant has made a material misrepresentation, or omission of information in an application for a license;

(h) The license or applicant has been elected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The license or applicant has violated or attempted to violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;

(j) The license or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The license or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the rearrangement of a race result, or has failed to report knowledge of such an attempt to the authorities;

(l) The license or applicant has demonstrated financial irresponsibility by accumulating unpaid obligations, defaulting on obligations, or issuing drafts or checks that are dishonored or not paid;

(m) The license or applicant has failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The license or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of standardbreds;

(o) The license or applicant has been charged with criminal conduct;

(p) The license or applicant has been convicted of a crime involving bookmaking, betting, or similar pursuits or has consorted with a person convicted of such an offense;

(q) The license or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to one or more persons in connection with the outcome of a race, or has failed to report conduct of this nature immediately to the judge;

(r) The license or applicant has abandoned, mistreated, abused, neglected, or caused death in cruel and improper treatment to a horse;

(s) The license or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or facility;

(t) The license or applicant has been convicted of a felony, or otherwise disqualified from association with association grounds, without written permission from the commission or the presiding judge.

1. A firearm; or

2. Any other appliance or device, other than an ordinary whip, which could be used to inflict the speed of a horse in a race or workout;

(u) The license or applicant has violated any of the alcohol or substance abuse provisions outlined in KRS Chapter 239 or 811 KAR 1:225;

(v) The license or applicant has failed to comply with a written order or ruling of the commission or the judges pertaining to a racing matter or investigation;

(w) The license or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(x) The license or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(y) The license or applicant has participated in or engaged any conduct of a disorderly nature on association grounds which
includes but is not limited to:
1. Failure to obey the judges' or other officials' orders that are expressly authorized by the administrative regulations of the commission;
2. Failure to drive when excused by the judge;
3. Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he or she is carded to drive;
4. Fighting;
5. Assault;
6. Offensive and profane language;
7. Smoking the track in colors during actual racing hours;
8. Warming up a horse prior to racing without colors;
9. Disturbing the peace;
10. Refusing to take a breath analyzer test when directed by the presiding judge;
11. Failure to wear safety vest while warming up or racing;
   (a) The licensee or applicant has used profane, abusive, or insulting language to or interfere with a commission member, commission employee or agent, or racing official, while these persons are in the course of discharging their duties;
   (b) The licensee or applicant has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official duties;
   (c) The licensee or applicant appears on the Commonwealth of Kentucky Revenue Cabinet's most recent tax delinquent tax list and the applicant's delinquent tax liability has not been satisfied;
   (d) The licensee or applicant is unqualified to perform the duties for which the license is issued;
   (e) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;
   (f) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;
   (g) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with Kentucky statutes or administrative regulations;
   (h) The licensee or applicant failed to comply with a written directive or ruling of the commission or the presiding judge;
   (i) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 17 of this administrative regulation;
   (j) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;
   (k) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;
   (l) The licensee or applicant has aided or abetted any person in violation of any statute or administrative regulation pertaining to horse racing;
   (m) The licensee or applicant has employed or harbored an unlicensed person required by these administrative regulations to be licensed;
   (n) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:
      1. A hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse, except as permitted by KAR Title 811; or
      2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by the commission;
   (o) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge;
   (p) A license suspension, revocation, or denial shall be reported in writing to the applicant by the presiding judge and the ARCI by the Division of Licensing, whereby other racing jurisdictions shall be advised of the license suspension, revocation, or denial;
   (q) A license applicant may appeal the suspension, revocation, or denial in accordance with KRS Chapter 138;

Section 16. Reciprocity. If the license of a person is denied, suspended, or revoked, or if a person is ruled off, excluded, or suspended from a race track in any other jurisdiction, the commission may require reinstatement at that track before a license shall be granted by the commission;

Section 17. Changes in Application Information. (1) During the period for which a license has been issued, the licensee shall report to the commission any information provided on the license application. If changes in the following:
   (a) Current legal name;
   (b) Narcotic status;
   (c) Permanent address;
   (d) Filing criminal complaints;
   (e) Criminal convictions;
   (f) License denial and license suspensions of ten (10) days or more;
   (g) License revocations or fines of $500 or more in any other jurisdiction;
   (h) Racing-related disciplinary charges in any other jurisdiction;
   (i) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction;
   (j) A change in application information shall be submitted in writing upon the appropriate commission form, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change;

Section 18. Temporary Licenses. (1) Only an owner is eligible for a temporary license. A horse in a trainer's care shall not start in a race unless the owner has a current license or an application for a temporary license is on file with the commission. A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains. Failure by the applicant to supply a name, social security number, and mailing address for a temporary license is grounds for refusal. A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the thirteenth day pending completion of all licensing procedures. Upon expiration of the thirty (30) days temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures. Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year;
   (2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year;

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except when prohibited by Section 20 of this administrative regulation due to a potential conflict of interest;

Section 20. Conflict of Interest. (1) The License Review Committee and the presiding judge or their designees shall deny or refuse to process the license of a person, and the commission or the presiding judge shall revoke or suspend the license of a person, whose spouse, immediate family member, or other partner in a similar relationship holds a license which the License Review Committee or presiding judge finds to be a conflict of interest. A finding of a conflict of interest may be appealed to the commission pursuant to KRS Chapter 138;
   (2) A race official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race;
   (3) A person who is licensed as an owner or trainer, or has any financial interest in a horse entered in a race, shall not be employed or licensed in that race as any of the following:
      (a) Racing official;
      (b) Assistant starter;
      (c) Practicing veterinarian;
      (d) Veterinary technician/veterinary technologist;
      (e) Officer or managing employee;
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(f) Track maintenance supervisor or employee;
(g) Outsider;
(h) Race track security employee;
(i) Farrier;
(i) Photo finish operator;
(k) Horsemen’s bookkeeper;
(l) Racing chemist;
(m) Testing laboratory employee.

(4) Veterinary technicians and veterinary assistants shall not be licensed in any other capacity that allows access to the stable area.

(5) More than one (1) license to participate in racing may be granted to a person except when prohibited by this administrative regulation due to a potential conflict of interest.

Section 21. License Photo Identification Badges. (1) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge). These photo identification badges are available to licensees upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The judges or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the Executive Director, the Judges, a Commission Director of Security or Licensing, or their designees, upon request.

Section 22. Duties of Licensees. (1) A licensee shall be knowledgeable of these administrative regulations and, by acceptance of the license, agrees to abide by these administrative regulations.

(2) A licensee shall report to track security or the judges any knowledge the licensee has that a violation of these rules has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the judges and the commission, and all decisions by the judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the judges may be appealed to the commission, except those made by the judges as to:

(a) Findings of fact as occurred during and incident to the running of a race;

(b) A determination of the extent of disqualification of horses in a race for ‘‘touts’’ committed during the race;

(c) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.

(d) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of the rules of the commission, or any wrongdoings by any person and cooperate in any subsequent investigation.

Section 23. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to elect or exclude persons, licensed or unlicensed, from association grounds.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Licensing Application", KHRC 25-01, 10/08;
(b) "Licensing Ownership/Control Form", KHRC 25-02, 10/08;
(c) "Change in License Information Form", KHRC 25-03, 10/08;
(d) "Verifications of Employment and Workers Compensation Form", KHRC 25-04, 10/08;
(e) "Termination of Stable Employee Form", KHRC 25-05, 10/08;
(f) "Race Track License Application", KRC-16 12/01; and
(g) "Corporate Disclosure Form", KRC-17, 12/01.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m., or can be viewed at www.khrc.com.

Section 1. Owners. Every person owning a horse that is entered at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. The application shall be on forms provided by the authority and shall be filed at any authority office. The license shall be presented to the clerk of the course at the time the horse is entered in a race.

Section 2. Leased Horses. Any horse under lease shall race in the name of the lessor and a copy of such lease must be filed with the Kentucky Horse Racing Authority. Any horse shall race under lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and the lessee is a current licensee of the authority in good standing. Persons violating this administrative regulation shall be fined, suspended or expelled.

Section 3. Driver’s Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the authority shall be required to obtain a license from the authority and the United States Trotting Association. Such application shall be on forms provided by the authority. Applications may be filed at any authority office. Such license shall be presented to the clerk of the course before driving. Pending a valid license by the United States Trotting Association, the authority may, at its discretion, issue a provisional or full driver’s license to those who qualify as set out by this administrative regulation.

Section 4. Qualification for a Provisional and Full Driver’s Li-

ence. (1) Every applicant for a provisional license to drive a har-

ness horse at a race meeting licensed by the commission shall meet the following requirements:

(a) Not have been convicted of a crime described in KRS 336B 01(4) or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.

(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, this shall include the equivalent of one (1) year’s training experience. Any new applicant for a driver’s license shall be reviewed by the presiding judge and a committee of three (3) "A" class drivers appointed by the United States Trotting Association District Six (6) Chairman.

(c) Be at least eighteen (18) years of age.

(d) Furnish a completed application form.

(e) Submit satisfactory evidence of an eye examination indicating 20/40 correted vision in both eyes, or if one (1) eye blind, at least 20/30 corrected vision in the other eye, and, when requested, submit evidence of physical and mental ability and/or submit to a physical examination.

(f) No person sixty (60) years of age or older who has never held any type of driver’s licence previously shall be issued a driver’s license.

(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.

(h) No applicant who has previously held any type of driver’s license shall be subsequently denied a driver’s license solely on the basis of age.

(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:

(a) At least one (1) year’s driving experience while holding a provisional license from the United States Trotting Association;

(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutuel...
meeting,

(5) In the event any person is involved in an accident on the track, the authority may order the person to submit to a physical examination and the examination shall be completed within thirty (30) days from the request or his license may be suspended until compliance.

(4) All penalties imposed on any driver may be recorded on the reverse side of his authority driver's license by the presiding judge.

(6) The Kentucky Racing Authority reserves the right to require any driver to take a physical examination at any time.

Section 5 - Trainers' Application for License. An applicant for a trainer's license shall show proof that he is duly licensed as a trainer by the United States Trotting Association and shall meet the requirements set forth in 511 KAR 1:086, Sections 1, 2, 3, 5, and 14, and 511 KAR 1:035, Section 5.

Section 6 - Absence of Trainers. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 7 - Grooms' Application for License. An applicant for a license as a groom must satisfy the authority that he possesses the necessary qualifications, both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperaments, experience, knowledge of the rules of racing, and the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 8 - (1) The holder of a license issued by the United States Trotting Association for the calendar year shall be presumed to be qualified to receive a license.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the stawards list if a race is held solely for qualifying drivers, the race may not be started. A race solely for qualifying drivers must have more than four (4) starters.

Section 9 - The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:

(1) Failure to obey the judge or other officials or orders that are expressly authorized by the administrative regulations of this authority.

(2) Failure to drive when programmed unless excused by the judge.

(3) Drinking intoxicating beverages within four (4) hours of the first post time of the program on which he is carded to drive.

(4) Fighting.

(5) Assault.

(6) Offensive and profane language.

(7) Smoking on the track in colors during actual racing hours.

(8) Warming up a horse prior to racing without colors.

(9) Disturbing the peace.

(10) Refusing to take a breath analyzer test when directed by the presiding judge, deputy commissioner (supervisor of racing), assistant deputy commissioner (assistant supervisor of racing)

Section 10 - Colors and Helmet. Drivers must wear distinguishing colors, and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judge they are properly-dressed. From the time it becomes necessary to wear colors before the races, no one will be permitted to jog, train, warm-up or drive a horse during a race meet licensed by the Kentucky Horse Racing Authority unless he is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation's 1984 Standard for Protective Headgear For Use in Harness Racing. The standard is hereby incorporated by reference. Any equestrian helmet bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.

Section 11 - Measurment-in-Colors. Any driver wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed $100 for each such offense.

Section 12 - Driver-Change. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both, by order of the judges.

Section 13 - Amateur Definition. An amateur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14 - Registered Colors. Drivers holding an "AA" license or drivers with a "SA" license, no longer hold an "AA" license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.


(2) Application forms may be inspected, copied, or obtained at the Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 31, 2008
FILED WITH LRC: November 3, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 29, 2008, at 10 am, at the South Park Theatre at the Visiter's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Monday, December 22, 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. 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 Wednesday, December 31, 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: CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: John Forgy
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation, 811 KAR 1:025, governs the licensing of individual participants in standardized horse racing in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The regulation is necessary to provide licensing standards for standardized racing, and to provide a licensing fee schedule. Revenues generated by licensing fees provide operational funds for the Kentucky Horse Racing Commission.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs
thoroughbred licensing pursuant to KRS 230.215(2) and 230.250(3) which authorize the commission to promulgate administrative regulations governing the conditions of horse racing. In addition, KRS 230.290 and 230.310 provide statutory criteria for the licensing of participants in Kentucky racing. 

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

(a) How the amendment will change this existing administrative regulation: This amendment contains several substantive changes which update the licensing standards for thoroughbred racing and increase the licensing fee in some categories of licenses, to ensure that there is adequate funding for operational costs of the commission. In addition, it also amends the language of the regulation to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to the administrative regulation: The amendments are necessary to update the licensing standards for thoroughbred racing, and to increase the licensing fees to provide adequate funding for the Kentucky Horse Racing Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation sets forth the rules regarding thoroughbred licenses.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,000 thoroughbred licenses are issued in a calendar year to a variety of licensees, including owners, trainers, assistant trainers, drivers, stable employees, veterinary personnel, racing officials, farriers, vendors, agents, mutual clerks, agents, and employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of the administrative regulation, if new, or by the change, if it is an amendment, including: All of the above entities will be impacted by updates in licensing standards and procedures. The increase in licensing fees from $100 to $125 will apply to owners, trainers, assistant trainers, drivers, and veterinarians. This increase in fees will impact approximately 1,500 license applicants in these categories.

(5) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All will fill an updated application in the 2023 licensing year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with the updates to the licensing regulations. There will be a twenty-five (25) dollar increase in licensing fees to owners, trainers, assistant trainers, drivers, and veterinarians.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All participants will benefit from better notice to them of the qualifications to obtain a license, and of the licensing procedures.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It is estimated that there will be no new costs to the agency associated with these amendments.

(a) Initially: N/A

(b) On a continuing basis: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation will not require an increase in fees, except as described in (4).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Increase in fees as described in (4).

(9) TIERING: TIERING does not apply because the updates in the licensing regulation shall apply to all participants in horse racing equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215(2), 230.260(3), 230.290 and 230.310.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. Will increase funding for standardbred racing by approximately $37,000 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? See above

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

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

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health
Division of Public Health Protection and Safety

902 KAR 45:005. Kentucky [Retail] food code.


STATUTORY AUTHORITY: KRS 194A.050(1), 211.080(3), 211.120(4), 217.125(Chapter 196), 214.050-214.090, 217.091, 217.125, 217.092 authorize 217.005 to 217.215 and 217.992(4) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. The function of this administrative regulation is to establish a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health. [Executive Order 06-682, effective July 2, 1996, reorganized the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(2) "Mobile food unit" is defined by KRS 217.015(21).

(3) "Temporary food establishment" is defined by KRS 217.015(45).

Section 2. Insertions and Modifications to the 2005 FDA Food
Code. (1) Except as provided by subsection (2) of this section, the 2005 edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this subsection.
   (a) "Accredited program" includes those food manager certification programs taught by local health departments as agents of the cabinet.
   (b) "Food establishment" includes a bed and breakfast as defined by 932 KAR 45.006.
   (c) FDA Food Code Subparagraph 3-301.11(D). Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands:
   1. The permit holder has a written policy that addresses hand washing at intervals not to exceed thirty (30) minutes while processing, preparing, and serving all ready-to-eat foods; and
   2. Hand washing policies are maintained in the food establishment and made available to the regulatory authority upon request.
   (d) FDA Food Code Subparagraph 9-302.11.
   1. A mobile food unit shall not operate for more than fourteen (14) consecutive days at one (1) location.
   2. After the fourteen (14) consecutive days has expired, a mobile food unit shall not operate at the same location until a period of thirty (30) days has elapsed.
   (e) The following provisions of the 2005 FDA Food Code shall not apply to Kentucky food establishments:
   (i) FDA Food Code Subparagraph 8-3.1.11(D)(2)(a).
   (ii) FDA Food Code Subparagraph 3-301.11(d)(e).
   (f) Other control measures approved by the regulatory authority.
   (g) FDA Food Code Subparagraph 8-301.10 (B).
   1. A line of not more than (designate amount) dollars, or by imprisonment not exceeding one (1) year, or both the fine and imprisonment.
   2. If the PERSON has been convicted once of violating this Code, or if there is an intent to defraud or mislead, a line not exceeding (designate amount) fine, or imprisonment exceeding (designate time) years.
   Section 3. Inspections and Violations (1) If an inspection is made of an establishment, the findings shall be recorded on form DFS-205. Food Establishment Inspection Report, and shall constitute a written notice to the permit holder.
   (2) A copy of the inspection report shall be furnished to the permit holder upon request.
   (3) The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a point value for each requirement.
   (4) The rating score of the establishment shall be the total of the point value for all violations subtracted from 100.
   (5) The inspection report form shall specify a period of time for the correction of the violations found pursuant to the following provisions:
   (a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point items shall be corrected prior to the next routine inspection.
   (b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point items shall be corrected within a period not to exceed thirty (30) days.
   (c) Regardless of the rating score of the establishment, all violations of three (3), four (4), or five (5) point items shall be corrected within a time period specified by the cabinet but not to exceed ten (10) days.
   (d) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of Intent to suspend the permit, using form DFS-214 Enforcement Notice. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed in accordance with 502 KAR 1:400.
   (e) A permit shall be suspended immediately upon notice to the permit holder without a hearing if:
   1. The cabinet has reason to believe that an imminent public health hazard exists;
   2. The permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves;
   3. An inspection of an establishment reveals a rating score of less than sixty (60).
   (f) A permit holder subject to the immediate suspension of a permit may make application on form DFS-215, Application for Reinstatement of Suspended Permit, for the purpose of reinstatement of suspended permit.
   (g) All violations concerning a temporary food service establishment shall be corrected within twenty-four (24) hours.
   1. If violations are not corrected within the required twenty-four (24) hour time period, the permit shall be immediately suspended.
   2. The permit holder whose permit has been suspended may request a hearing using form DFS-212.
   3. If a food service establishment is required under the provisions of the administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist.
   (h) An opportunity for reinspection shall be offered within seven (7) days of the cabinet's receipt of the form DFS-215.
   (i) The inspection report shall state that:
   1. Failure to comply with a time limit for correction may result in the suspension of a permit, and
   2. An opportunity for appeal will be provided if a written request for a hearing is filed in accordance with 502 KAR 1:400.

Section 4. Effective Date. This Code and the rules, regulations, provisions, requirements, and orders shall take effect one (1) year from the date of approval.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
   (b) "DFS-200, Facility Profile", edition 07/01.
   (c) "DFS-209, Application for a Permit to Operate a Temporary, Fee Exempt or Farmer's Market Temporary Food Service Establishment", edition 04/07.
   (d) "DFS-208, Food Establishment Inspection Report", edition 12/08.
   (e) "DFS-210, Notice to Correct Violations", edition 02/95.
   (g) "DFS-213, Notice of Violation", edition 08/96.
   (h) "DFS-214, Enforcement Notice to Apply for Permit, Order to Cease Operation, or Permit Suspension and Order to Cease Operation", edition 08/96.
   (i) "DFS-215, Application for Reinstatement of Suspended Permit", edition 02/95.
   (j) "DFS-216, Record of Complaint and Investigation", edition 04/96.
   (k) "DFS-218, Concessionaires Food Sanitation Guidelines", edition 05/94.
   (l) "DFS-222, Notice and Order of Quarantine", edition 05/94.
   (m) "DFS-222, Tag Quarantined", edition 10/90.
   (n) "DFS-223, Label for Sample Collection and Analysis", edition 09/97.
   (o) "DFS-224, Food Service or Farmer's Market Temporary Food Service Establishment", edition 04/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 276 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025.
   (2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.
   (3) "Chemical preservative" means any chemical that, if added
to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegar, euploe, or oils extracted from euploe substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicide properties.

(4) "Closed" means without openings large enough for the entrance of insects. An opening of one sixteenth (0.16) inch or less is closed.

(5) "Corrosion-resistant material" means those material that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bacteriostatic solutions and other conditions of the use environment.

(6) "Easily cleanable" means that surfaces are readily accessible and made of a material and finish so fabricated that residue may be effectively removed by normal cleaning methods.

(7) "Employed" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(8) "Equipment" means all stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, circles, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) "Food contact surfaces" means those surfaces with which food may come in contact, and those surface that drain onto surfaces that may come in contact with food.

(10) "Hormetically sealed container" means a container which is designed and intended to be aseptic against the entry of microorganisms and to maintain the commercial integrity of its contents after processing.

(11) "Kitchenware" means all multivuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or apparatus.

(13) "Meatproduced or food products" means any food or food product misbranded as provided by KRS 217:036.

(14) "Mobile food unit" means a food service establishment that is designed to be readily moveable.

(15) "Packaged" means bottled, canned, cartoned, or essentially wrapped at a food processing establishment.

(16) "Package" means any container or wraping in which any food is ensconced for use in the delivery or display to retail processors, but does not include shipping packaging or outer wrappings used by retailers to ship or deliver any food to retail customers. If the container does not bear no printed matter pertaining to any particulat commodity; containers used for tray-pack displays in retail establishments; transparent wrappings or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the 21 U.S.C. 341 to 345.

(17) "Polishable food" means food of a type or in a condition or physical state that may be polished or otherwise be found for human consumption.

(18) "Preservative" includes pesticides, insecticides, fungicides, herbicides, and rodenbod as defined in KRS 217B:040(2).

(19) "Potentially hazardous food" means any food or ingredient, natural or synthetic (a) in a form capable of supporting the;

1. Rapid and progressive growth of infectious or pathogenic microorganisms;
2. Slower growth of Clostridium botulinum;
3. Of animal origin, either raw or heat treated, and
4. Of plant origin which;

1. Has been treated;
2. Is in a raw egg product;
3. The following are excluded.

1.4. Air dried hard boiled eggs with shells intact;
2.2. Food with water activity (aw) value of 0.85 or less;
3.2. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened, hermetically sealed containers that have been commercially processed to achieve and maintain commercial entity under conditions of non-refrigerated storage and distribution and
5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious or pathogenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(20) "Pushcart" means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods of commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) "Reconstituted" means dehydrated food products combined with water or other liquids.

(22) "Safe-temperature food" means, if considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and one hundred forty degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

(23) "Sanitized" means effective bacteriostatic treatment by a process that provides enough cumulative heat or concentration of chemoats for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) "Seasoned restricted food concession" means any food conces establishment which operates for not longer than eight (8) consecutive months in one (1) year, and shall prepare and serve only nonpotentially hazardous foods except that plain frankfurters with bread and no such with cheese sauce may be served. It shall not include concessions or establishments which serve only pre-packaged, sneak type nonpotentially hazardous foods.

(26) "Shellfish" means clams, mussels, or oysters.

(27) "Sewage" means liquid waste containing fecal material or organic matter from garbage grinders.

(28) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, ice tongs, paddles, straws, napkins, wrapping material including bags, toothpicks, and similar articles which are designed for one (1) time, one (1) person use and then discarded.

(29) "Tableware" means all multiusse eating and drinking utensils.

(30) "Utensil" means any food contact implement used in the storage, preparation, transportation, dispensing, serving or sale of food.

(31) "Washwater" means the cleaning and sanitizing of food contact surfaces of equipment and utensils, such as kitchenware and tableware.

(32) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2: Applicability. The requirements of the administrative regulation are applicable to all food service establishments, retail food stores, or any combination of both within the same establishment, as defined by KRS 217:016.

Section 3: Application and Permit to Operate. (1) Any person desiring to operate a food service establishment, a retail food store, or a seasonal restricted food concession shall make a written application for a permit or form DFS 200 provided by the cabinet. This form is incorporated by reference and may be viewed at the Department for Public Health, 276 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(2) The application is for a retail food store or food service combined operation in one (1) establishment under one (1) ownership, the application shall:

1. Designate "retail food and food service combination",
2. Include the name and address of the applicant,
3. The location and type of the proposed food service establishment and
4. The signature of the applicant.

(3) If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation.

(4) Prior to approval of an application for permit, the cabinet shall:

1. Inspect the proposed food service establishment to deter-
mine compliance with the provisions of this administrative regulation; and
(b) Issue a permit to the applicant if the inspection reveals that the proposed food service establishment is complete with the requirements of this administrative regulation.

Section 4. Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, preserved or processed in the home is prohibited.
(2) Fluid milk and fluid milk products sold or served shall be pasteurized and shall meet the Grade A quality standards as established by law and administrative regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.
(3) All shellfish, fresh or frozen shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, chucker, packer, or reclaimer, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, muscles, clams) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and complies with the cabinet-administered regulations. Shellstock source information shall be maintained on the container until it is empty and then shall be kept on file at the establishment for ninety (90) days.
(4) Only clean whole eggs, shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercial eggs and egg products purchased, and all institutional eggs and egg products shall be used.
(5) All meat and meat products, poultry, and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.
(6) All fish and fish products shall be approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 5. Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unsecured or unattended food or food containers, water, and all other materials. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recorders thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers.
(2) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.
(3) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.
(4) Ice is intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that the ice may be used for cooling tubs conveying beverages in the dispensing area of a dining room. Disposed ice, food tubs, bottles, coolers, and other items shall be kept clean, in good repair, and in accordance with approved materials.
(5) The internal temperature of potentially hazardous foods shall be maintained at a temperature of forty-five (45) degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recorders thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as Bain-marie, steam tables, steam kettles, heat lamps, coolers, or insulated food transport carriers, a product thermometer accurate to plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.
(6) The internal temperature of potentially hazardous foods requiring hot storage shall be forty-five (45) degrees Fahrenheit or above except during necessary periods of preparation and the hot potentially hazardous foods to be transported shall be held at an internal temperature of forty-five (45) degrees Fahrenheit at all times during transportation.
Section 7. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked, unless they are precooked, and this requirement shall not apply to whole, unpeeled fruits and raw vegetables for sale in retail food stores.

(3) Potentially hazardous foods—requiring cooking—shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:
   (a) Poultry, poultry stuffing and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.
   (b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 160 degrees Fahrenheit.
   (c) Rare roast beef shall be cooked to an internal temperature of at least 120 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 100 degrees Fahrenheit unless otherwise ordered by the immediate customer.
   (4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.
   (5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.
   (6) Potentially hazardous foods—those cooked and then refrigerated—shall be reheated rapidly to 145 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, banimannes, wariners, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Non-dairy creaming, whitening, or whipping agents may be reconstituted in the premix only when they will be stored in sanitized, screw-top, non-nitrogen filled packages or on a Laboratory shelf temperature of forty degrees Fahrenheit or below.

(8) Metal can-type, commonly known as thermometers, accurate to plus or minus three (3) degrees, Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperature of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:
   (a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit;
   (b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and prevent food particle into the over flow;
   (c) In a microwave oven only if the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process, or if the equipment uninterrupted cooking process takes place in the microwave oven;
   (d) As part of the conventional cooking process.

Section 8. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of one hundred degrees Fahrenheit or higher during display and service.

(2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping, counter service line or salad bar food guards, display covers, or other effective means.

(3) Waste of cooked tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available at the sign shall be posted in self-service food area to inform customers of the requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food.

Section 9. Food Transportation. During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged to be protected from contamination during transportation, including transportation to another location for service or catering operations.

Section 10. Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause a disease or who is afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 39 of this administrative regulation.

Section 11. (1) Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(2) Hand-washing shall take place at a hand-washing lavatory or designated service sink and not at food preparation sink or at a warewashing sink.

Section 12. Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnet, hat, scarf, or similar hair covering that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 13. Employee Practices. (1) Employees shall eat, drink, or use tobacco only in designated areas. The area shall not be designated if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employee shall handle cooled tableware in a way that minimizes contamination of their hands.

(3) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygiene practices.

(4) Employees shall remove all jewelry, and during periods when food is manipulated by hand, remove from hands any
jewelry that cannot be adequately sanitized.

Section 14. Equipment and Utensils: Materials. (1) Multiuse equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion-resistant and shall be hard, impervious, and free of cracks, and shall be easy to clean, replaceable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion-resistant.

(3) Hard maple or equivalently nonabsorbent material that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, bakers' tables, and wooden paddles in comminution operations for pressure-skimming kettles if manually preparing comminution at a process temperature of 220 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single-service articles such as chopsticks, coffee filters, ice cream spoons, and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to weathering, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to prevent cleaning and sanitizing by normal detergent methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and oyster shells may be used only once as a serving container. Further reuse of the shell for food service is prohibited.

Section 16. Equipment and Utensils: Design and Fabrication. (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V"-type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of threads shall be minimized.

(2) Equipment containing bearings and gears requiring uncured lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish-tubs, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be removable for cleaning and inspection:
   (a) Without being disassembled, or
   (b) By disassembling without the use of tools; or
   (c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:
   (a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and
   (b) Cleaning and sanitizing solutions will not contaminate interior food-contact surfaces.

(6) The system is self-draining or capable of being completely evacuated.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of a material that can be readily put up in repair to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensation from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacemen.

Section 16. Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:
   (a) It is small and light enough to be moved easily by one (1) person; and
   (b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor-mounted equipment, unless readily movable, shall be:
   (a) Sealed to the floor; or
   (b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or setting underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or
   (c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjacent equipment units and between it and adjacent walls shall be closed or, if exposed to soaping, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Adequate working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this administrative regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable. If it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic, equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 17. Equipment and Utensils: Cleaning and Sanitation. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout-the-day on a schedule based on food temperatures, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems.
Food-contact surfaces of all cooking equipment shall be kept free of greasy deposits and other accumulated soil.

(5) Non-food-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food-contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in a container in one (1) of the sanitizing solutions permitted by subsection (7)(a) or (g) of this section. Moist cloths, or sponges, used for cleaning non-food-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) If manual cleaning and sanitizing is used, corks shall be cleaned prior to use. Equipment and utensils shall be pretreated or precleaned and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a) through (i) of this subsection.

(9) All tableware and food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment, and shall be sanitized in the third compartment, according to one (1) of the methods included in paragraph (a) through (i) of this subsection.

2. Immersion for at least one (1) minute in a clean, solution containing at least fifty (50) parts per million of available chlorine as hypochlorite and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean, solution containing at least twelve and five-tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free of harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least two (2) minutes required for that particular sanitizing compound, as permitted by subsection (7)(a) or (g) of this section, followed by rinsing to remove any sanitizing solution in case of equipment too large to sanitize by immersion.

(b) If chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration, Chapter 1, Subpart B, Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3)-compartment sink shall be used if cleaning and sanitizing of equipment or utensils is done manually; retail food establishments that were operating with a valid and effective permit prior to the effective date of this administrative regulation but not having a three (3)-compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the cabinet. Sinks shall be of large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Equipment shall be made available if cleaning and sanitizing cannot be accomplished by the three (3)-compartment sink or the three (3)-compartment sink that does not cut package or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3)-compartment sink.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing facility.

(e) Hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink, capable of maintaining the water at a temperature of at least one hundred and forty degrees Fahrenheit; and

2. A mechanically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit or a conventional thermometer capable of measuring the water and that can be used for frequent check of water temperature; and

3. Dish baskets of a size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(f) If mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray type or immersion warewashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(g) The procedure of water supplied to spray type warewashing machines shall not be less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse-sprays to permit monitoring of the flow rate to the machines.

(h) If readily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicates the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(i) Rinse water tanks shall be so designed to collect and distribute as much as possible of the entry of wash water into the rinse water. Conveyors in warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machine.

(j) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as to not to interfere with the proper use of the warewashing facilities.

(1) Equipment and utensils shall be flushed or scoured and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a warewashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of downward water and equipment is free from debris. Clean rinse water shall remove particulate matter and detergents residues. All warewashing machines shall be thoroughly cleaned at least once a day or more often if necessary to maintain them in a satisfactory operating condition.

(2) If chemicals are used for sanitization, they shall be automatically dispersed in concentration and for a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single tank, automatic, or manual-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than one hundred and fifty degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer. Where machines using hot water sanitization are used, wash water and pumped rinse water shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting the time and temperature requirements as are acceptable by the cabinet. Wash and pumped rinse temperature shall be measured in each machine, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:
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Administration - Chapter I, Subpart D, Specific Usage Additives Section 173.510 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and administrative regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original container.

(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk-water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to applicable laws and administrative regulations.

Section 20. Seawage. All sewage shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 5 or the Cabinet for Health Services administrative regulations 002 KAR Chapter 10. If a public sewerage system becomes available, connections shall be made to the public sewerage system and all private sewerage shall be disconnected. Only non-water-carried disposal methods which have been approved by the cabinet for temporary use shall be used.

Section 21. Plumbing. (1) All plumbing shall be sized, installed, and maintained pursuant to the State Plumbing Code, KRS Chapter 318. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated. All reservoir-type and other pressure-generating and meter shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed pursuant to applicable state laws and administrative regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contains food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backspillage shall be installed at all fixtures and equipment whoever backflow or backspillage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open-sink, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22. Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be located so as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to the requirements of the State Plumbing Code, KRS Chapter 318.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight fitting, and self-closing and shall be closed except during cleaning or maintenance. Doors may be louvered if installed pursuant to the State-Fire Marshall administrative regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 23. Lavatory Facilities. Lavatories shall be installed pursuant to the State Plumbing Code and shall be equipped with
hot and cold running water or running water-tempered by means of a mixing-valve or combination-faucet. Steam mixing-valves are prohibited. Hand cleaning soap or detergent, and approved sanitary towels or other approved hand-drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited. (2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall be conveniently located within the food preparation area and warewashing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand-washing. (3) Lavatories, soap dispensers, and hand-drying devices and all related facilities shall be kept clean and in good repair.

Section 24 - Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak-proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment if protected from insects and rodents. (2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered if not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning. (3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates. (4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers. (5) Garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food waste need not be stored in covered containers. (6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable, materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate. (7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-kissed asphalt, that is kept clean and maintained in good repair. (8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents. (9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to administrative regulations 401-KAR Chapter 63 of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly. (10) Nonswage liquid waste shall be disposed of in a manner that will not create a public health nuisance.

Section 25 - Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and fleas, roaches, and other insects on the premises shall be utilized. The premises shall be kept in a condition as to prevent the harborage of feeding of insects or rodents. (2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed window, sash-closing, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 26 - Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grade of linoleum or plastic, or light wood impregnated with plastic, and shall be maintained in good repair. (2) Carpentry, if used, shall be properly installed, easily cleanable, and maintained in good repair. Carpentry is prohibited in toilet rooms, food preparation areas, and in warewashing areas where it would be exposed to large amounts of grease and water. (3) Sawdust, wood shaving, peanut hulls, or similar material on the floors in food processing areas is prohibited. (4) Properly installed floor drains shall be provided in floors that are water-flush'd for cleaning or that receive discharge of other fluid waste from equipment. Floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor. (5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain. (6) Mats and duckboards shall be of nonabsorbent, grease-resistant materials and of a size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks. (7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar materials, and where water flush cleaning methods are used, junctures of walls with floors shall be covered and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one (1/2) inch. (8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning. (9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair. (10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and warewashing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or chinking is prohibited in those locations except by special plan approval by the cabinet. (11) Studs, joists, and other structural members shall be constructed of nonabsorbent materials, such as sealed concrete, metal, or wood, and shall be covered or painted. Walk-in refrigerators, food preparation areas, warewashing areas, and toilet rooms except by special plan approval by the cabinet. (12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning. (13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair. (14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or crevices. (15) Concrete or concrete blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 27 - Cleaning Physical Facilities. Floors, walls, ductboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only desirable methods of cleaning floors and walls shall be used. Such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods if the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered,
readily-accessible service sinks or curbed cleaning facilities shall be provided.

Section 28—Lighting—(1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, warewashing, and hand-washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that the requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 29—Ventilation—(1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke, and fumes. Ventilation systems shall be installed and operated according to applicable state laws and administrative regulations and, if vented to the outside, shall not create an unsightly, hazardous, or unlawful discharge.

(2) Rooms containing food-storage, food-preparation, or food-service areas, and equipment from which odors, fumes, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects, and other contaminating materials.

Section 30—Dressing, Resting, and Lockers—(1) If employees routinely handle clothes within the establishment, areas shall be designated for that purpose. These areas shall not be located in areas used for food preparation, storage, or service or for warewashing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees’ clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 31—Poisonous or Toxic Materials—(1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitation of equipment or utensils shall be present in retail food establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law.

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(4) Working containers used for strong cleaners and sanitizers taken from bulk supplies shall be identified with the common-name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single-service articles, or single-use articles intended for use with food.

(6) Degreasing, sanitary, related-cleaning, or drying agents, caustics, acids, polishes, lubricants, and other chemicals shall not be stored above or intermingled with food equipment, utensiles, single-service articles, single-use articles intended for use with food, except that the requirement does not prohibit the convenient location and accessibility of cleaning and sanitizing agents at warewashing facilities.

(7) Bacteriocides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on the surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensiles, nor in a way that constitutes a hazard to employees or other persons.

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Section 32—Promises—(1) Retail food establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean clothes and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and clothes shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensiles, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food-service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible enclaves, such as fish, or live fish in aquaria. Escorted police-patrol dogs or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33—Mobile Food Units or Pushcarts—(1) Mobile units or pushcarts shall comply with the requirements of this administrative regulation, except as provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and if no health hazard will result, may waive or modify requirements of this administrative regulation relating to physical facilities, except those requirements of subsections (4) and (6) of this section and Sections 34 and 36 of this administrative regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this administrative regulation or beverages that are not potentially hazardous and are dispensed from protected equipment, need not comply with requirements of this administrative regulation pertaining to the necessity of water- and sewage-systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensiles used as required equipment for cleaning and sanitation exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a
potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand washing, pursuant to the requirements of this administrative regulation. The water inlet shall be located in a position that it will not be contaminated with waste-decorative, road dust, oil or grease, and it shall be provided with a transition connection of a size and type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code, KRS Chapter 318.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently-installed retention tanks that are at least 100 percent larger than the water-supply tank. Liquid waste shall not be discharged from the retention tank if the mobile food unit is in motion. All connections on the vehicle for serving mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34. Commiscary. (1) Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with the administrative regulations. Mobile food units equipped with a potable water supply system under pressure, liquid waste retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods, shall not be required to operate from a fixed retail food establishment.

Section 35. Mobile Food Unit or Pushcart-Serving Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water-service equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 6 and the Cabinet for Health Services Resource administrative regulations 903 KAR Chapter 10. If a public sewerage system is not available, equipment shall be designed and constructed to isolate and establish sewerage systems.

Section 36. Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of the administrative regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and if no health hazard will result, may waive or modify requirements of this administrative regulation, except these requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custard, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. The prohibition does not apply, however, to any potentially hazardous food that is obtained in individual packages, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of one hundred and forty degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of the administrative regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or wet strength paper bags filled and sealed at the point of manufacture. The ice shall be held in those bags until used, and if used, shall be disposed of in a manner that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary, to prevent contamination, effective shields for the equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand washing. Enough hot water for those purposes shall be provided.

(6) The storage of packaged food in contact with water or un-drained ice is prohibited, except that one or more bottles of nonpotentially hazardous beverages may be stored if the water contains at least sixty (60) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand washing. Where water under pressure is unavailable, the facility shall consist of a pan, warm water, hand cleaner, and individual paper towels.

(9) Floors shall be made of concrete, tile, other durable, maintainable, material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquid and solid refuse and to prevent leaks and cracks.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that precludes the interior of the establishment from the weather. Siding material used for walls shall be at least inches (16) mesh to the inch. Counter-service openings shall not be larger than is necessary for the particular operation conducted. If flies are prevalent, counter-service openings shall be provided with light-fitting (sold) or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37. Seasonal Restricted Food Concessions. (1) A seasonal restricted food concession shall comply with the requirements of this administrative regulation except as otherwise provided in this section. If no health hazard will result, the cabinet may waive or modify requirements of this administrative regulation except these requirements of subsections (2) to (14) of this section.

(2) Only nonpotentially hazardous foods shall be prepared and served by seasonal restricted food concessions except that plain frankfurters may be served with bread. Frankfurters may be heated by steaming or boiling; grilling shall be prohibited. Nachos with cheese sauce may be served. Seasonal restricted food concessions shall provide only single-service articles for use by consumers. Condiments such as catsup, mustard, and relish shall be obtained from approved commercially-prepared sources and shall be served in individually-prepackaged portions or dispensed from protected pump or squeeze-type dispensers only. The preparation of sauces of meat or artifical meat sauces shall be prohibited. The use of food or food products named, prepared or processed in the home is prohibited.

(3) Reconstitutable products or ingredients which contain milk or egg components shall have been made from pasteurized products. Choose sauce for nachos shall be obtained from commercially approved sources.

(4) Flavorings made from concentrate shall not be formulated or mixed in the home; preparation shall be accomplished in the seasonal restricted food concession or other permitted retail food establishment.

(5) Equipment and utensil cleaning and sanitization. Cleaning and sanitizing of food equipment and utensils shall be accomplished in a manner that complies with applicable requirements of Section 17 of this administrative regulation. In seasonal restricted concessions where running water and sewage are impractical
and where only the use of base utensils such as knives, tongs, or scoops is necessary, utensil washing facilities shall consist of three (3) containers sufficiently large enough for immersion of the utensils requiring washing, the first for hot detergent wash, the second for rinsing, and the third for sanitizing. The cleaning and sanitizing of flavoring containers and equipment in the home or other non-permitted location shall be prohibited.

(6) Equipment and utensil storage. All cleaned and sanitized utensils and equipment in a seasonal restricted food-concession shall be stored and handled consistently with requirements of Section 18 of this administrative regulation.

(7) Sanitary facilities and controls. (a) If running water is available it shall be potable, adequate and from a supply approved pursuant to the requirements of the Cabinet for Health and Family Services, 945 KAR 7:030.

(b) All water not provided by pipe to the establishment shall be obtained from an approved source, shall be potable, be transported in sealed food grade bulk containers, and shall be of sufficient quantity for the operation. Hot water, at least ninety-five (95) degrees Fahrenheit, shall be provided for utensil and hand washing. An insulated container may be used. A push button or turn spout shall be provided through which potable water may be drawn from the storage container for hand and utensil washing.

(8) Liquid waste. All nontoxic liquid shall be collected and disposed of in accordance with applicable requirements of Section 24 of this administrative regulation.

(9) Plumbing and toilet facilities. (a) All plumbing shall comply with applicable provisions of the State Plumbing Code, KRS Chapter 138.

(b) Sanitary toilet facilities shall be provided for employees and shall comply with the requirements of the State Plumbing Code, KRS Chapter 138, and Section 24 of this administrative regulation, provided that where an approved State approved sewage system with running water is impractical, commercial, type portable toilet facilities shall be provided for employees and shall be serviced and maintained in a sanitary manner.

(c) Written permission shall be obtained and made available for health authority review, for use of convenient toilet facilities if not owned by the seasonal restricted food-concession operator.

(10) Hand washing facility. Where running water is impractical an ample supply of water, as described in subsection (2) of this section shall be provided for washing hands. Wastewater shall be collected and disposed of in a manner that will not create a public health nuisance.

(b) If a seasonal restricted food-concession is located adjacent or provided to a facility with an approved and covered sewage system, the water and sewage facilities closest to the food-concession shall be provided conveniently for utilization for the facilities.

(11) Garbage and refuse. Garbage and refuse shall be collected, stored and disposed of in accordance with the requirements of Section 24 of this administrative regulation.

(12) Construction, maintenance, and cleaning of physical facilities. (a) Construction, maintenance and cleaning shall be carried out in accordance with applicable requirements of Sections 22 and 27 of this administrative regulation except as provided in paragraphs (b), (c), and (d) of this subsection.

(b) Seasonal restricted food-concessions which are located in open air areas shall be completely enclosed or equipped with an eighteen (18) inch maximum high service opening that is either self-closing or equipped with an air current to prevent the entry of flying insects when prevalent.

(c) Floors shall be made of concrete, tile, wood, asphalt, or other similar cleanable material, gravel or dirt floors shall be prohibited.

(13) Plan review. If a seasonal restricted food concession is constructed or extensively remodeled, or if an existing structure is converted for use as a seasonal restricted food concession, appropriate plans with specifications for the construction, remodeling or alteration showing size, location, type of interior wall, ceiling and floor construction including the method of outer opening protection shall be submitted to the cabinet for review and approval before construction is begun.

(14) Inspection frequency. The cabinet shall inspect each seasonal restricted food-concession at the time of initial permit issuance and at least once during each six-month period of operation thereafter, unless such inspections are unnecessary in the opinion of the cabinet.

Section 38. Plan Review of Future Construction. When a retail food establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail establishment, properly prepared plans and specifications for construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before work is begun.

Section 39. Procedure If Insufficient is Suspected. If the cabinet has reasonable cause to suspect possibility of disease transmission from any food-service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's service to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the body discharges of employees;

Section 40. Food Caterers Must Display Permit Number. Each catering kitchen or similar food service establishment shall have posted in foyers at least three (3) inches high the establishment's permit number clearly visible on vehicle(s) used in transporting foods. A copy of the establishment's permit to operate shall also be carried in each vehicle at all times. The permit number shall be declared in all forms of advertisements or promotional materials used by food service catering establishments.

Section 41. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that an imminent public health hazard exists, or if the permit holder or an authorized agent has interfered with or otherwise obstructed the work of the cabinet, the cabinet shall have the power to issue an order to correct the situation before the situation becomes dangerous to the public health. Orders shall be in writing and shall be served upon the permit holder. The order shall set forth the nature of the violation, the name of the person or entity whose conduct is the subject of the order, the nature of the violation, and shall set a reasonable time, not to exceed ten days, within which to bring the violation into compliance.

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation and the holder shall be entitled to correct the violation within ten (10) days. If the violation is not corrected within the ten-day period, the cabinet shall file a complaint with the appropriate court and the court may issue an order to correct the violation.

(3) Any person whose permit has been suspended may at any time make application for a new permit to the cabinet for a reinstatement of the permit. This form is incorporated by reference and may be viewed at the Division of State and Local Food Protection Office at the Department of Public Health, 500 West Main Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
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seven (7) days following receipt of a written request, including a statement signed by the applicant that he/she understands the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit will be reinstated.

(4) For cease or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed in accordance with 002-KAR 1:400. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original or a copy thereof has been delivered personally to the permit holder or person in charge, or if the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) All administrative hearings shall be conducted in accordance with 002-KAR 1:400.

(7) At least once every six (6) months, the cabinet shall inspect each establishment and shall make as many additional inspections as may be necessary for the enforcement of this administrative regulation. Retail food stores offering only prepackaged foods for sale shall be inspected at least once each twelve (12) months with as many additional inspections and reinspections as may be necessary. Seasonal re-roofed food concessions shall be inspected at least once during the eight (8) month permitted period of operation each year.

(8) If an inspection is made of an establishment, the findings shall be recorded on inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. This form is incorporated by reference and may be viewed at the Department for Public Health, 276 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of the administrative regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to the following provisions:

(a) If the rating score of the establishment is eighty-five (85) or more, violations of one (1) or two (2) point-weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70), but not more than eighty-four (84), all violations of one (1) or two (2) point-weighted item shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point-weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed in accordance with 002-KAR 1:400.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In this event, the permit holder may request a hearing.

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of the permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed in accordance with 002-KAR 1:400.

(g) If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 42—Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this administrative regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.216 and 217.992.

Section 43—The provisions of this administrative regulation shall apply to both food service establishments and retail food stores, unless otherwise specified.

WILLIAMS D. HACKER, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008 at 9 a.m. in the Administrative Hearings Branch, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 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 31, 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: Christina Atkinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: The function of this administrative regulation is to establish a uniform code for the regulation of all food service establishments, retail food establishments, for the purpose of protecting the public health.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to achieve the public health goals set forth by the legislature in KRS 217.002 to 217.998.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is vested in the secretary. The secretary may make the regulations promulgated under the federal act and the Fair Packaging and Labeling Act and the Nutrition Labeling and Education Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide uniformity statewide for all types of
food service operations by defining the parameters to provide for a safe food supply. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation. The amendment will replace the existing Kentucky Food Code, based upon the 1976 FDA Food Code and replace it with the 2005 FDA Food Code. (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the current code and modernize KY's food safety regulatory system to be based on the most current scientific knowledge and be more uniform with the national standards. (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the goals set forth in KRS 217.005 to 217.215, which authorizes the secretary to make regulations consistent with those promulgated under the federal act. (d) How the amendment will assist in the effective administration of the statutes: The amendment will establish uniform food safety standards statewide. These standards will be consistent with national food safety standards which will be of benefit to food establishments that have a national presence, such as corporate chains in that they will have uniformity. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All foodservice establishments, retail food stores, temporary food establishments, restricted food service establishments, non permanent food service units, including any and all food service activities that constitute food service to the public. Currently there are approximately 20,500 permitted facilities of these types. All county health departments are affected by this regulation as agents of the cabinet with respect to enforcement responsibilities and the Department for Public Health, Division of Public Health Food and Safety, as the Flagship for Safety Branch. (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Each entity impacted by this regulation will have to conform to changes not consistent with the previous food code. The differences are with the modernization of the code to include the most up to date scientific knowledge. These changes reflect an emphasis on food protection through risk based procedures rather than solely on facility management. The result is improved food safety through a risk based approach backed by science. Their actions will be to learn the changes and put them in place as they apply to their operations. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initially some establishments will have to make minor adjustments in equipment and training for staff. As agreed to with our constituency, Kentucky Restaurant Association, Kentucky Retail Federation, local health and others in meetings planning for this change a one year effective date is requested after passage to educate and prepare food service establishments for the changes. It is difficult to quantify this amount for such a wide ranging group (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of this regulation is the modernization of the system of ensuring a safe food supply to the public through utilization of the most up to date scientific information. The adoption of the 2005 FDA Food Code, as referenced, with few amendments will allow our state to apply a safe food regulatory system statewide, and be more consistent with the nation. This national uniformity is very beneficial to corporations large and small that operate in various states in that they can depend on a uniform food safety code, which is business efficient. (d) If this is an amendment to an existing administrative body to implement this administrative regulation: (a) Initially: No additional costs will be incurred as currently a regulation is already in place and implemented. (b) On a continuing basis: There will be no continuing costs. (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Permit fees and agency funds. (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: It would not be necessary to increase fees to implement this regulation as a similar regulation is already in place with a fee schedule. (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any new fees. (9) TIERING: Is tiering applied? Tiering is not applied. There is already a similar regulation in place. FISCAL NOTE ON STATE OR LOCAL GOVERNMENT 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All local Health Departments, as agents of the Cabinet and all school cafeterias as well as the Division of Public Health Protection and Safety. 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.005 to 217.399 authorizes these regulations. 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 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 revenue stream for the state will be the same as it is currently for these permits of regulated 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? Same as above. (c) How much will it cost to administer this program for the first year? The same as it cost at present. (d) How much will it cost to administer this program for subsequent years? There would not be an increase in cost to administer the regulation, other than regular and customary increases, salaries etc. 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 regulation adopts the federal 2005 FDA Food Code, with some minor changes. In effect it replaces the current Retail Food Code used statewide that dates from 1976. In essence it is a modernization of the Commonwealth's food safety regulatory system. The changes will take education, explanation, training and adjustment to all entities, foodservice establishment owners, operators, as well as regulatory officials at every level. These activities will cost time, and time is money, but with the wide array of those affected it is very difficult to give a specific dollar amount. As the adjustments occur and everyone becomes familiar with the changes things will return to business as usual.
205.520(3), EO 2004-728
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-728, effective July 8, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services, and [EO-2005-95, effective May 28, 2005, added "The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. 42 U.S.C. 1386(b)(1)-(4) establishes minimum requirements for state plans for estate recovery actions. This administrative regulation establishes provisions relating to estate recovery."

Section 1. Definitions. (1) "Aged institutionalized individual" means a recipient age fifty-five (55) or older who received nursing facility (NF) services, intermediate care facility for individuals with mental retardation or a developmental disability (the mentally retarded and developmentally-disabled), [ICF/MR/DD) (services], home and community based services (HCBS) or supports for community living (SCL) services with payment for these services made, wholly or in part, by the Medicaid Program.

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

(3) "Estate" means:
(a) All real and personal property or other assets owned by the deceased recipient that would be included as probate property under Kentucky law;
(b) All real and personal property or other assets in which the deceased recipient had legal title or interest at the time of death, to the extent of the recipient's interest, whether the asset was conveyed to a survivor, heir or assignee of the deceased recipient through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

(4) "Estate representative" means the court appointed fiduciary or the fiduciary's attorney, the recipient family member or other interested party who represents the department in writing that he or she is the representative for the estate.

(5) "Long-term care partnership insurance" is defined by KRS 304.14-64(2).

(6) "Long-term care partnership insurance policy," means a policy meeting the requirements established in KRS 304.14-64(2).

(7) "Period of institutionalization" means the period of time an aged institutionalized or permanently institutionalized individual received Medicaid services.

(8)(6) "Permanently institutionalized" means residing in a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (the mentally retarded and developmentally disabled) for six (6) months or more.

(9)(7) "Recipient family member" means the surviving spouse, child or sibling of a deceased recipient.

(10) "State plan" is defined by 42 C.F.R. 400.203.

(11)(6) "Surviving child" means a living child under age twenty-one (21), or a child who is blind or disabled as defined in 42 U.S.C. 1382c.

Section 2. Recovery. (1) The department shall seek recovery from the estate of a deceased recipient for a period of institutionalization, (2) The amount recovered shall not exceed the amount paid by the Medicaid Program on behalf of the deceased recipient for services received during a period of institutionalization.

(3) The amount subject to recovery shall include:
(a) The expenditures for:
1. Nursing facility (NF) services;
2. ICF/MR/DD [Intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) services];
3. Home and community based services (HCBS); and
4. Supports for community living (SCL) services; and
(b) Other costs for:
1. Related prescription drugs, hospital services, and related physician services; or
2. Medicare cost-share or Medicare premiums.

(4) The amount subject to recovery shall include a capitation payment made by the Medicaid Program to a managed care organization on behalf of the deceased recipient.

Section 3. Exemptions and Limitations. (1) Recovery shall not be made from the estate if the estate representative can verify to the department's satisfaction that there is a:
(a) Surviving spouse; or
(b) Surviving child.

(2) Recovery shall not be made from the estate on any resources protected from consideration during the eligibility determination process based on payment issued by a long-term care partnership insurance policy.

(3) The department shall waive estate recovery to the extent the recovery would work an undue hardship.

(a) Undue hardship shall exist if an asset subject to recovery is the sole income-producing asset, for example a family farm or business, conveyed to the surviving recipient family member. A sole income-producing asset shall not include residential real property producing income through a lease or rental arrangement.

(b) The estate representative shall apply for an undue hardship exemption by:
1. Making a written request to the department within thirty (30) days or receipt of the notice provided in accordance with Section 4(3)(a) of this administrative regulation; and
2. Verifying to the department's satisfaction the criteria specified in paragraph (a) of this subsection exists for an undue hardship.

(c) The department shall issue a decision on undue hardship exemption request within thirty (30) days of receipt of the request and supporting documentation.

(4) If the department denies the estate representative's request for an undue hardship exemption, the estate representative may request an appeal. 2. If an appeal is requested, an administrative hearing shall be conducted in accordance with 907 KAR 1:563, Section 4, and KRS Chapter 13B.

(e) The department shall not conclude that an undue hardship exists if the deceased recipient created the hardship by resorting to estate planning methods under which the recipient illegally divested assets to avoid estate recovery.

(4)(9)(a) The department may waive recovery if it is not cost effective to recover from the estate.

(b) The department shall not consider it to be cost effective to recover from an estate if the total date-of-death value of the estate subject to recovery is:
1. Less than the administrative cost of recovering from the estate; or
2. $10,000 or less.

(5)(4)(a) The department may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir.

(c) The estate representative shall submit to the department a written request for an exemption and provide verification to the satisfaction of the department.

(6)(5)(a) A deceased recipient's estate shall be subject to recovery of Medicaid Program expenditures to the extent it is adjudicated through a final administrative appeal process or court action that the recipient qualified for Medicaid fraudulently.

(b) If the recipient qualified for Medicaid fraudulently, the exemptions or limitations established in this section shall not apply.

Section 4. Notification. (1) A general written notice regarding estate recovery shall be provided by the department to an aged institutionalized or permanently institutionalized individual, or an authorized representative acting on his or her behalf, at the time the individual requests coverage of NF services, ICF/MR/DD services, HCBS, or SCL nursing facility (NF) services, intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) services, home and community based services (HCBS), or supports for community living (SCL) services under the Medicaid Program.

(2) When an aged institutionalized or permanently institu-
ized individual who is receiving NF services, ICF/MR/DD services, HCBS, or SCL services; nursing facility (NF) services; intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) services; home and community-based services (HCBs); or support for community (SCS) services under the Medicaid Program dies, the Medicaid provider from which the recipient was receiving institutionalized services at the time of death shall be responsible for reporting the death to the local Department for Community Based Services office within ten (10) days of the date of death.

(3)(a) Upon receipt of the notice of death specified in subsection (2) of this section, the department shall prepare and serve written notice of its intent to recover upon the estate representative.

(b) The estate representative shall be responsible for notifying individuals who are affected by the proposed recovery.

(c) If no estate representative exists, notice shall be provided to the family members or heirs if the recipient has provided the department with this information through the eligibility application process.

(d) The notice of intent to recover shall include:
   (a) The action the department intends to initiate;
   (b) The reason for the action;
   (c) Exemptions and limitations to estate recovery as specified in Section 3 of this administrative regulation;
   (d) Conditions that are considered an undue hardship exemption as specified in Section 3(2) of this administrative regulation;
   (e) Procedures for applying for an undue hardship exemption as specified in Section 3(2) of this administrative regulation;
   (f) The total amount subject to recovery; and
   (g) The procedure for appealing a denial of an undue hardship exemption request.

[Section 5. Effective Date: The provisions of the administrative regulation shall apply to an estate recovery for dates of death on and after September 1, 2003.]

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008, at 9 a.m. in the Cabinet for Health and Family Services, Administrative Hearings Branch Conference Room, 275 East Main Street, Frankfort, Kentucky.

Individuals interested in attending the hearing shall notify this agency in writing by December 15, 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 31, 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: Debbie Keith or Cheryl Bentley (502) 564-6204

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes requirements for federally mandated estate recovery.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary for the purpose of allowing the Medicaid program to recover funds expended for institutional care provided to a recipient, consistent with the federal mandate, and to include optional areas of recovery under federal law that enhance recovery.
   (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 adopting federal mandates and including optional areas of recovery consistent with federal law.
   (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 minimum requirements for the estate recovery program and adopting optional areas that will enhance recovery of funds.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation provides provisions for estate recovery exemptions on any resources that have been protected from consideration during the eligibility determination process based on payment issued by a long-term care partnership insurance policy when a recipient participates in the long-term care insurance partnership program.
   (b) The necessity of the amendment to this administrative regulation: The amendment to this regulation is necessary to allow provisions to be implement that will allow exceptions for estate recovery when a recipient participates in the long-term care insurance partnership program.
   (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adopting federally permissible exemptions on estate recovery when an applicant participates in a long-term care partnership insurance program. The Department for Medicaid Services is granted authority to implement this action by the authorizing statutes.
   (d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by adopting federally permissible estate recovery exceptions in order to financially benefit the Medicaid program in the long-term.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will impact Medicaid recipients who receive institutionalized services and those who participate in a long-term care insurance partnership program. Not all institutionalized Medicaid recipients will be impacted, unless they are eligible for a long-term care insurance partnership program. Parties that may be impacted by the amendments to this administrative regulation are individuals receiving long-term care medical assistance, insurance agents, Department for Medicaid Services, Department of Insurance, and Department for Community Based Services. The number of individuals is undeterminable. Currently, there are approximately 27,000 individuals receiving Medicaid long-term care benefits. It is anticipated there will be an increase in the number of persons impacted as the baby boomer population increases.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Medicaid recipients may gain estate recovery protection when they purchase a long-term care partnership insurance policy. The Department of Insurance regulates the long-term care partnership insurance program. The Department for Medicaid Services benefits when Medicaid recipients purchase a long-term care partnership insurance policy because in the long term it should result in reduction of financial burden to the Department for Medicaid Services. The Department for Community Based Services will determine the exclusions and protection from estate recovery on resources during the eligibility determination process.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-
tion (3) Regulated entities are not expected to experience any cost as a result of the amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The Medicaid recipient will have protection from estate recovery on any resources exempted from consideration during the eligibility determination process based on payment issued by a long-term care insurance partnership.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional cost to implement this administrative regulation.
(b) On a continuing basis: There is not expected to be any additional cost 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: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees nor funding is expected to be necessary to implement the amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fee. This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all those individuals or entities regulated by it. Tiering is not applicable in this administrative regulation because the regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate
42 U.S.C. 1396p(b)(1)-(4) contains the federal mandate for all state Medicaid programs to seek recovery against the estates of recipients who were permanently institutionalized or received certain institutional services at age 55 or older. C.F.R. 435.238 contains the federal mandate regarding individuals in institutions who are eligible under special income level.

2. State compliance standards. KRS 205.520(3) authorized the cabinet to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation mandates recovery against estates of permanently institutionalized recipients and recipients age 55 and older who received institutional services. This regulation includes a full waiver of recovery where there is a surviving spouse or surviving child under 21, or blind or disabled. This administrative regulation contains the mandatory provision of an undue hardship waiver process and includes criteria that are consistent with the federal guidelines included in the Centers for Medicare and Medicaid Services (CMS) Publication 45-3, Section 3810. CMS is the federal regulatory authority for the estate recovery program. The amendments to this administrative regulation provide provisions for estate recovery exemptions when a recipient participates in the long-term care insurance partnership program. Estate is defined to include probate assets and all other real and personal property.

3. Minimum or uniform standards contained in the federal mandate.
42 U.S.C. 1396p(b)(1)-(4) mandates that the estate include all real and personal property of the recipient as defined under state probate law, and provides the state with the discretion to include all other real and personal property within the estate. C.F.R. 435.238 allows coverage for individuals institutionalized who are eligible under a special income level. The federal statute mandates that the state has procedures under which the agency may waive recovery due to an undue hardship, but the statute does not mandate specific criteria for what would be considered an undue hardship. The federal statute mandates that no recovery should occur when there is a surviving spouse or surviving child under 21 or blind or disabled. The amendments to this administrative regulation provide provisions for estate recovery exemptions when a recipient participates in the long-term care insurance partnership program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandates? 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 impacted by this administrative regulation? The Department for Medicaid Services, Department for Community Based Services, and Department of Insurance.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary in order to comply with requirements in HB 259 2008 and resulted in a new section of chapter 205 and new sectors of subchapter 14 of KRS chapter 304, specifically 304.14-640 to 304.14-644.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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. Changes are not expected in expenditures and revenues for state or local government agencies for the first full year that 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? An increase in revenue is not expected for the state or local government for the first year, however, in future years there should be a reduced financial burden to the Department for Medicaid Services.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? An increase in revenue is not expected for state or local government for subsequent years; however, for subsequent years there is expected to be a reduced financial burden to the Department for Medicaid Services.

(c) How much will it cost to administer this program for the first year? An increase in cost to administer this program is not expected during the first year.

(d) How much will it cost to administer this program for subsequent years?  An increase in cost to administer this program is not expected 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 Medicaid Services
Division of Member Services
(Amendment)


STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1),

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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 cooperate with any plan 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 resource standards for determining eligibility for Medicaid benefits.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.
(2) "Department" means the Department for Medicaid Services or its designee.
(3) "Homestead" means property which an individual:
(a) Has an ownership interest in; and
(b) Uses as his or her principal place of residence.
(4) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.
(5) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:
(a) Death;
(b) Continued voluntary or involuntary absence;
(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or
(d) Unemployment of one (1) parent if both parents are in the home.
(6) "Liquid resource" means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.
(7) "Long-term care partnership insurance" is defined by KRS 304.14-040(4).
(8) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).
(9) "Medicaid works individual" means an individual who:
(a) But for being in excess of the income limit established under 42 U.S.C. 1396(q)(2)(F) would be considered to be receiving supplemental security income;
(b) Is at least sixteen (16), but less than sixty-five (65), years of age;
(c) Is engaged in active employment verifiable with:
1. Paycheck stubs;
2. Tax returns;
3. 1099 forms; or
4. Proof of quarterly estimated tax;
(d) Meets the income standards established in 907 KAR 1:640; and
(e) Meets the resource standards established in this administrative regulation.
(10)(9) "Permanent institutionalization" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.
(11)(8) "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).
(12)(11) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.
(13)(12) "Resources" mean cash money and other personal property or real property that:
(a) An Individual:
1. Owns; and
2. Has the right, authority, or power to convert to cash; and
(b) Is not legally restricted for support and maintenance.
(14)(13) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy, as established in 907 KAR 1:011 the upper limit for resources for a family size of one (1) and for a family size of two (2) shall be $2,000 and $4,000 respectively, with fifty (50) dollars for each additional member.
(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:
(a) A child under age one (1);
(b) A child who is at least age one (1) but under age six (6);
(c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines; or
(d) A targeted low income child, as defined in 42 U.S.C. 1397jj(b), from birth to age nineteen (19).
(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.
(4) For a pass-through recipient, as established in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, or a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011 resources shall be limited to the allowable amounts for the SSI Program.
(5) For an AFDC-related Medicaid case, the resource limit shall be $1,000.
(6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds $500,000 unless:
(a) The individual has a spouse who is lawfully residing in the individual's home;
(b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home; or
(c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.
(7) Resources for a Medicaid works individual shall not exceed $5,000 per individual or $10,000 per couple.

Section 3. Resource Exclusions. (1)(a) A homestead, household or personal effects, and farm equipment shall be excluded from consideration without limitation on value.
(b) After permanent institutionalization, property shall cease to be a homestead unless:
1. A spouse or other dependent family member continues to reside there; or
2. A signed statement verifies that the permanently institutionalized individual intends to return to the homestead.

The statement shall:
(a) Be signed by:
(i) The permanently institutionalized individual;
(ii) A representative payee;
(iii) A person who has power of attorney for the individual;
(iv) The individual's guardian; or
(v) Another legal representative; and
(b) Require annual renewal.
(2) For an adult Medicaid case or a Medicaid works individual:
(a) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration.
2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:
(a) Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child, and
(b) Is used in a trade or business or by the individual or member of the family group as an employee;
(b) Except as provided in paragraph (c) of this subsection, equity of $4,500 in automobiles shall be excluded from consideration.
(c) If an automobile is used as a home, for employment, as
obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if received from consideration in an SSI determination of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:
   (a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.
   (b)1. Nonhome property, which was previously the homestead property of a permanently institutionalized individual, shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.
   2. Additional time to sell the property may be allowed, on a case-by-case basis, if it can be demonstrated a reasonable effort to sell the property at fair market value within the specified time frame has failed.
   3. Reasonable effort to sell the property shall consist of:
      a. Listing the property with a real estate agent if the agent:
         1. Places a "For Sale" sign on the property which is clearly visible from the nearest public road; and
         2. Advertises the property in the local newspaper or on local television or radio stations; or
      b. A combination of at least two (2) of the following actions:
         1. Advertising the property in the local newspaper or on local television or radio stations; or
         2. Placing a "For Sale" sign on the property which is clearly visible from the nearest public road;
         3. Distributing fliers advertising the property for sale;
         4. Posting notices regarding availability of the property on community bulletin boards; or
         5. Showing the property to interested parties on a continuing basis.
   (c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.
   (4) For an AFDC-related Medicaid case, $1,000 in resources shall be excluded from consideration.
   (5) A burial reserve of up to $1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.
   (a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.
   (b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.
   (c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as part of the burial reserve or space.
   (6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.
   (7) For a family-related or an AFDC-related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.
   (8) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).
   (9) An individual development account up to a total of $5,000, excluding interest accruing, shall be excluded from consideration as a resource for an AFDC-related Medicaid case.
   (10) Disaster relief assistance shall be excluded from consideration.
   (11) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(12) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(13) Real property other than the homestead shall be excluded from consideration if:
   (a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;
   (b) Its sale is barred by a legal impediment; or
   (c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(14) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(15) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance (RSDI) benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(16) A federal Republic of Germany reparations payment shall not be considered as an available resource.

(17) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:
   (a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or
   (b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(18) An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(19) An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

(20) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(21) A payment received from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

(22) An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

Section 4. Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

(2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources shall be exempted.

(3) Resources excluded from consideration during a long-term care eligibility application process and subsequently protected from estate recovery due to payments rendered by a long-term care partnership insurance policy shall:
   (a) Be issued on or after the effective date of this administrative regulation; and
   (b) Be approved by the Department of Insurance as a long-term care partnership insurance policy in accordance with KRS 304.14-120, 304.14-640-644, 806 KAR 14-007, 806 KAR 17-081, and 806 KAR 17-083.

(4) The exclusion referenced in subsection (3) of this section shall be based on a one (1) dollar for one (1) dollar amount of benefit received as a direct reimbursement to provide for long-term care expenses or benefits paid on a per diem basis issued directly to the individual.

(5) In accordance with section 42 U.S.C. 1396(a)(2) an individual does not have to exhaust the benefits of the policy prior to applying for assistance through the department.
   (a) This exclusion shall be limited to the amount paid to the
applicant or on behalf of the applicant beginning with the month of application for Medicaid benefits.

(b) An applicant shall identify the resources to be excluded, equal to the benefit received from the policy when applying for long-term care services through the department.

(c) The exclusion shall not impact an applicant's eligibility for payment for nursing facility services or other long-term care services if the individual's equity interest in home property exceeds the limits established in 42 U.S.C. 1396c(f) and in Section 2(d) of this administrative regulation.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services, Administrative Hearings Branch Conference Room, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 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 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: Debbie Keith or Cheryl Bentley (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to eligibility resource standards for Medicaid.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions for Medicaid eligibility resource standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility resource standards.

(d) How this administrative regulation assists in the effective administration of the statute by establishing provisions related to Medicaid eligibility resource standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes provisions for resources to be excluded from consideration during a long-term eligibility application process and subsequently provides protection from estate recovery due to payments rendered by a long-term care partnership insurance policy. The exclusions are based on a one (1) dollar for one (1) dollar amount of benefits paid as a direct reimbursement to providers for long-term care expenses or benefits paid on a per diem basis issued directly to an individual.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to allow provisions for the exceptions for estate recovery when a recipient participates in the long-term care insurance partnership program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adopting federally permissible estate recovery opportunities. The Department for Medicaid Services is granted authority to implement this action by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by adopting federally permissible estate recovery opportunities in order to ensure the availability of funding necessary for the continued operation of the Medicaid Program.

(e) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation. This administrative regulation will impact Medicaid recipients who receive institutionalized services and those who participate in a long-term care insurance partnership program. Not all institutionalized Medicaid recipients will be impacted, unless they participate in a long-term care insurance partnership program. Parties that may be impacted by the amendments to this administrative regulation are individuals receiving long-term care medical assistance, insurance agents, Department for Medicaid Services, Department of Insurance, and Department for Community Based Services. The number of individuals is undeterminable. Currently, there are approximately 27,000 individuals receiving Medicaid long-term care benefits. It is anticipated there will be an increase in the number of persons impacted as the baby boomer population increases.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Regulated entities are not expected to experience any cost as a result of the amendments to this administrative regulation.

(b) As a result of compliance, what benefits will accrue to the entities identified in question (3). The Medicaid recipients will have protection from estate recovery on any resources excluded from consideration during the eligibility determination process based on payment issued by a long-term care insurance partnership.

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

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

(b) On a continuing basis: There is not expected to be any additional cost 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: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees nor funding is expected to be necessary to implement the 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 any fees for directly or indirectly increase any fees.

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(9) Tiering: Is tiering applied? Tiering is not applicable in this administrative regulation because the regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396p(d)(1)-(4) contains the federal mandate for all state Medicaid programs to seek recovery against the estates of recipients who were permanently institutionalized or received certain institutional services at age 55 or older.

2. State compliance standards. KRS 205.520(3) authorized the cabinet 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.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 435 contains federal mandates pertaining to this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation 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 impacted by this administrative regulation? The Department for Medicaid Services, Department for Community Based Services, and Department of Insurance.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary in order to comply with requirements in HB 259. HB 259 was passed during the 2006 Kentucky General Session and is included in a new section of chapter 205 and new sections of subchapter 14 of KRS Chapter 304, specifically 304.14-640 to 304.14-644.

4. Estimate the effect of this administrative 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? An increase in revenue is not expected for the state or local government for the first year, however, in future years there should be a reduction in financial burdens to the Department for Medicaid Services.

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? An increase in revenue is not expected for state or local government for the first year, however, in future years there should be a reduction in financial burden to the Department for Medicaid Services.

6. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? An increase in revenue is not expected for state or local government for subsequent years; however, for subsequent years there is expected to be a reduction in the financial burden to the Department for Medicaid Services.

7. How much will it cost to administer this program for the first year? An increase in cost to administer this program is not expected during the first year.

8. How much will it cost to administer this program for subsequent years? An increase in cost to administer this program is not expected in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Member Services

(AMENDMENT)

907 KAR 1:650. Trust and transferred resource requirements for Medicaid.


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by the federal law for the provisions of medical assistance to Kentucky's indigent citizenry. KRS 205.6322 requires the cabinet to promulgate administrative regulations to prohibit the sheltering of assets in medical assistance long-term care cases. This administrative regulation establishes trust and transferred resource requirements for Medicaid eligibility determinations.

Section 1. Definitions. (1) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred.

(4) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred.

(5) "Income" means money received from:
(a) Statutory benefits, for example social security, Veterans Administration pension, black lung benefits, or railroad retirement benefits;
(b) Pension plans;
(c) Rental property;
(d) Investments; or
(e) Wages for labor or services.

(6) "Institutionalized Individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility (NF) and who is:
(a) An inpatient in:
1. A nursing facility (NF);
2. An intermediate care facility for individuals with mental retardation or a developmental disability (ICF-MR-DD); or
3. A medical institution;
(b) Receiving home and community based services (HCBS).

(7) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(8) "Qualifying Income Trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).

(9) "Resources" means money and other personal property or real property that an institutionalized individual or institutionalized individual's spouse:
(a) Owns;
(b) Has the right, authority or power to convert to cash; and
(c) Is not legally restricted from using for support and maintenance.

(10) "Transferred resource factor" means an amount that is:
(a) Equal to the average monthly cost of nursing facility services in the state at the time of application. The average monthly cost
shall be the average of the private pay rates for semi-private rooms of all Medicaid-participating nursing facilities; and

(b) Adjusted annually.

(11)[49] "Trust" means a legal instrument or agreement valid under Kentucky state law in which:

(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and

(b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

(12)[40] "Uncompensated value" means the difference between the fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset, and the amount received for the asset.

Section 2. Transferred Resources. (1) Transfer of resources on or before August 10, 1993.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility shall be computed if during the thirty (30) month period immediately preceding the application, but on or before August 10, 1993, the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall begin with the month of the transfer and shall equal the lesser of:

1. Thirty (30) months; or

2. The number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of the application.

(2) Transfer of resources after August 10, 1993 and before February 8, 2006.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF or ICF-MR-DD services, or HCBS shall be computed if:

1. During the thirty-six (36) month period immediately preceding the baseline date, but after August 10, 1993, and before the effective date of this administrative regulation, assets were transferred; or

2. During the sixty (60) month period immediately preceding the baseline date, but after August 10, 1993, and before the effective date of this administrative regulation, a trust was created whereby the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall:

1. Begin with the month of the transfer; and

2. Be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of the application.

(3) Transfer of resources on or after February 8, 2006.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF or ICF-MR-DD services, or HCBS shall be computed if:

1. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, assets were transferred; or

2. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, a trust was created whereby the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall:

1. Begin with the month of Medicaid eligibility for NF or ICF-MR-DD services, or HCBS; and

2. Be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of application.

(4) Jointly held resources shall be considered pursuant to 42 U.S.C. 1396p(c)(3).

(5) The addition of another individual's name to a deed shall constitute a transfer of resources.

(6) If a spouse transfers resources that result in an ineligibility period for the institutionalized spouse, the ineligibility period shall be apportioned between the spouses if the spouse is subsequently institutionalized and a portion of the ineligibility period against the first institutionalized spouse remains. If one (1) spouse is no longer subject to the ineligibility period, the remaining ineligibility period applicable to both spouses shall be served by the remaining spouse.

(7) The requirements of this section shall apply to an agreement in which an individual, prior to institutionalization, employed another person as a caregiver and made payment for all services provided by the caregiver prior to the individual's entry in a nursing facility.

(a) The caregiver agreement shall have:

1. Been notarized;

2. Identified and specified the cost of each caregiver service;

3. Specified that payment shall not have;

   a. Been made for a service not recognized in the agreement as a caregiver service; or

   b. Duplicated a service provided by another source; and

4. Included a provision that required payment to be made by the caregiver to the individual for the cost of each caregiver service not provided in accordance with the agreement.

(b) The cost of each caregiver service that was not provided in accordance with the agreement and not repaid by the caregiver shall be considered a transfer of resources.

(8) The requirements of this subsection shall be applicable with regard to resources sold by contractual agreement, including land contracts or contract for deeds. The contract must be actually sound, without balloon payments, and without forgiveness of debt in the event of termination of the sale.

(9) The requirements of this subsection shall be applicable with regard to annuities. A determination shall be completed with regard to the purpose of the purchase of an annuity in order to determine if resources were transferred for less than fair market value.

(a) If the expected return on the annuity is commensurate with the life expectancy of the beneficiary, the annuity shall be actuarially sound and shall not be considered a transfer of resources for less than fair market value.

(b) In accordance with 42 U.S.C. 1396p(c)(1)(f), the purchase of an annuity occurring on or after February 8, 2006 shall be treated as the disposal of assets for less than fair market value unless the cabinet is named:

1. As the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant;

2. A. A beneficiary in the second position after the community spouse or a minor or disabled child; and

b. A beneficiary in the first position if the community spouse or a representative of the child disposes of any remaining for less than fair market value.

(10)[49] The purchase of an annuity shall be considered a transfer of resources if:

(a) The expected return on the annuity is not commensurate with the life expectancy of the beneficiary, thus making the annuity not actuarially sound; and

(b) The annuity does not provide substantially equal monthly payments and has a balloon or deferred payment of principal or interest. Payments shall be considered substantially equal if the total annual payment in any year varies by five (5) percent or less from the payment in the previous year.

(11)[40] The following policies shall apply regarding the transfer of home property:

(a) Transfer of home property to the following individuals shall not constitute a transfer of resources for less than fair market value. Home property may be transferred to:

1. The spouse;

2. A child who is:

   a. Under age twenty-one (21); or

   b. Blind or disabled;

3. A sibling who has:

   a. Equity interest in the home and if one (1) year prior to institutionalization;

   b. [deleted] A child who;

   i. Resided with the institutionalized individual for two (2) years prior to institutionalization; and

   ii. Provided care to the individual to prevent institutionalization.

(b) Transfer of home property to any individual not listed in

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subsection (1) of this section shall constitute a transfer of resources for less than fair market value.

(12)(14)(a) For multiple or incremental transfers prior to February 8, 2006, the ineligibility periods shall accrue and run consecutively beginning with the month of the initial transfer.

(b) For multiple or incremental transfers made on or after February 8, 2006, the ineligibility period shall begin with the month of Medicaid eligibility for NF or ICF-MR-DD services, or HCBS.

(13)(14)(b) An individual shall not be ineligible for Medicaid or an institutional type of service:

(a) By virtue of subsections (1) to (9) of this section to the extent that the conditions specified in 42 U.S.C. 1396p(c)(2)(B), (C) and (D) or 807 KAR 1:655 are met; or

(b) Due to transfer of resources for less than fair market value except in accordance with this section.

(13)(14)(c) Disposal of a resource.

(a) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C) or presents convincing evidence that the disposal was exclusively for some other purpose.

(b) The value of the transferred resource shall be disregarded if:

1. The transfer is in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C);
2. It is for some reason other than to qualify for Medicaid; or
3. The transferred resource was not a homestead and was considered an excluded resource at the time it was transferred.

(c) If the resource was transferred for an amount equal to the assessed value for tax purposes, the resource shall be considered as being disposed of for fair market value.

(d) If the assessed agricultural value of the resource is used for tax purposes, the transfer shall be deemed to be for an amount equal to the fair market value.

(15)(14)(a) After determining that the purpose of a transfer was to become or remain Medicaid eligible, the cabinet shall add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property shall be counted against the available amount for nonhomestead property.

(15)(14)(b) If retention of the property would not have resulted in ineligibility, the value of the transferred resource shall be disregarded.

(c) If retention of the property would result in ineligibility, the cabinet shall compute a period of ineligibility for Medicaid or an institutional type of service as provided for in subsections (1) to (9) of this section.

(16)(14)(c) The uncompensated value may be excluded from consideration if good cause or undue hardship exists. A waiver of consideration of the uncompensated amount shall be granted subject to the following criteria:

(a) Good cause shall be determined to exist if an expense or loss was incurred by the individual or family group due to:
   1. A natural disaster, for example fire, flood, storm or earthquake;
   2. Illness resulting from accident or disease;
   3. Hospitalization or death of a member of the immediate family; or
   4. Civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) Undue hardship shall be determined to exist if:

1. Application of transferred resource penalties deprive an individual of:
   a. Medical care which shall result in an endurance to the individual's health or life; or
   b. Food, clothing, shelter, or other necessities of life; or
2. The cabinet determines that:
   a. The transfer of resources is not recoverable;
   b. The transfer of resources was not intended by the applicant to result in Medicaid coverage;
   c. The transfer of resources was made in circumstances beyond the applicant's control; or
   d. The applicant would be unable to receive necessary medical care unless an undue hardship exemption is granted.

(c) The exclusions shall not exceed the amount of the incurred expense or loss.

2. The amount of the uncompensated value to be excluded shall not include any amount which is payable by Medicaid, Medicare, or other insurance.

(d) If an institutionalized individual is subject to a period of ineligibility because the individual or individual's spouse disposed of property, assets, or resources for less than fair market value, the cabinet shall notify the individual in writing and include an explanation:

1. The criteria upon which an undue hardship waiver may be granted;
2. The process for seeking an undue hardship waiver; and
3. How to appeal an adverse action in accordance with Section 4 of this administrative regulation.

(e) Upon consent of the institutionalized individual or individual's personal representative, the facility in which the individual resides may:

1. Request an undue hardship waiver on behalf of the institutionalized individual;
2. Present information to the cabinet regarding the institutionalized individual's case; and
3. Request a hearing in accordance with Section 4 of this administrative regulation on behalf of the institutionalized individual if the cabinet denies the facility's request for an undue hardship waiver.

(f) If the cabinet suspends or terminates a recipient's eligibility because the cabinet discovers that the recipient or recipient's spouse transferred resources for less than fair market value and an undue hardship waiver is requested on behalf of the recipient, the cabinet shall provide payments for nursing facility services in order to hold the bed at the facility for up to, but not more than, thirty (30) days from the date of suspension or termination.

(g) If the cabinet decides in favor of a recipient's request for an undue hardship waiver and reverses its previous decision to suspend or terminate eligibility, the cabinet shall cover the recipient's nursing facility services at the facility's full rate for the period the individual is eligible under the undue hardship waiver.

(17)(14) Disclaiming of an inheritance by an individual entitled to the inheritance shall be considered a transfer of resources.

Section 3. Treatment of Resources for a Long-Term Care Applicant who has a Long-Term Care Partnership Agreement.

(1) The amount of benefits paid by the long-term care partnership agreement may be excluded from the resources of the applicant if:

(a) The amount paid by the long-term care partnership agreement is paid to the individual for long-term care expenses; and

(b) The recipient of the long-term care partnership agreement is not the individual for whom the resources are claimed.

Section 4. Rationale Behind the Transfer Penalty.
(2) For purposes of determining eligibility in accordance with Section 21(1) to (9) of this administrative regulation regarding trust agreements, the rules provided for under 42 U.S.C. 1396p(d)(3) shall be met and shall apply to a trust created after August 10, 1993, and established by an individual subject to 42 U.S.C. 1396p(d)(4).

(a) An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the individuals described under 42 U.S.C. 1396p(d)(2)(A)(i), (ii), (iii), and (iv) established the trust rather than by a will.

(b) If the creation of a trust includes income or resources of any other person or persons, the trust rules shall apply to the portion of the trust attributable to the income or resources of the individual. In determining countable income and resources, Income and resources shall be prorated based on the proportion of the individual's share of income or resources.

(c) Subject to 42 U.S.C. 1396p(d)(4), the trust provisions in 42 U.S.C. 1396p(d)(4) shall be applied in a manner consistent with 42 U.S.C. 1396p(d)(2)(C).

(d) Payments made from revocable or irrevocable trusts to or on behalf of an individual shall be considered as income to the individual with the exception of payments for medical costs. Payments for medical care or medical expenses shall be excluded as income.

(e) A trust which is considered to be irrevocable and terminates if action is taken by the grantor shall be considered a revocable trust.

(f) An irrevocable trust which may be modified or terminated by a court shall be considered a revocable trust.

(g) If payment from a revocable or irrevocable trust may be made under any circumstance, the amount of the full payment that could be made shall be considered as a resource including amounts that may be disbursed in the distant future.

(h) Placement of an excluded resource into an irrevocable trust shall not change the excluded nature of the resource.

(i) Placement of a countable resource into an irrevocable trust shall constitute a transfer of resources for less than fair market value.

(3) The treatment of trusts established in this section of this administrative regulation shall be waived if undue hardship criteria are met as established in Section 215(b) of this administrative regulation.

(4) Regarding subsection (1), (2), or (3) of this section, for trusts created on or prior to August 10, 1993, any resources transferred into a previously established trust after August 10, 1993 shall be considered a transfer of resources and subject to an ineligibility period as provided for under Section 2 of this administrative regulation using the thirty-six (36) month transfer rules.

(5) An individual may create a qualifying income trust, in accordance with this subsection, to establish financial eligibility for Medicaid.

(a) A transfer of resources shall not apply to a qualifying income trust if:

1. The trust is established in Kentucky for the benefit of an individual;
2. The trust is composed solely of the income of the individual, including accumulated interest in the trust;
3. Upon the death of the individual, the department receives all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual by Medicaid; and
4. The trust is irrevocable.

(b) The money in a qualifying income trust shall:

1. Be maintained in a separate account; and
2. Not be commingled with other checking or savings accounts.

(c) The corpus of a qualifying income trust and interest generated by the trust shall not be counted as available income for an individual for the determination of Medicaid eligibility.

(d) A qualifying income trust shall state that the funds may only be used for:

1. Valid medical expenses, including patient liability; or
2. The community spouse income allowance established in accordance with 907 KAR 1:655.

(e) All expenditures from a qualifying income trust shall require verification by the department that they are allowable expenditures.

(f) Allowable payments from a qualifying income trust shall be made:

1. Every month; or
2. By the end of the month following the month the funds were placed in the trust.

(g) If payments by the qualifying income trust are made for medical care, the individual shall be considered to have received fair market value for income placed in the trust.

Section 514 Appeal Rights. An appeal of a department decision regarding Medicaid eligibility of an individual based upon application of this administrative regulation shall be in accordance with 907 KAR 1.560.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services, Administrative Hearings Branch Conference Room, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the department in writing on or before November 15, 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to 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 31, 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: Debbie Keith or Cheryl Bentley (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes trust and transferred resource requirements for Medicaid eligibility determinations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish trust and transferred resource requirements for Medicaid eligibility determinations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in the authorizing statutes by establishing trust and transferred resource requirements for Medicaid eligibility determinations.

(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 trust and transferred resource requirements for Medicaid eligibility determinations.

(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 provides provisions for resources that the applicant can exclude from the eligibility determination and protect from estate recovery when the applicant participates in a long-term care insurance partnership program. This allows the applicant that disposed of a resource for less than fair market value resulting in a transfer penalty to choose to apply the allowable exclusion, dollar-for-dollar, to the transferred resources for the purpose of avoiding a penalty.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement provisions related to the transfer of resources in estate recovery when an individual participates in a long-term care partnership insurance program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by providing provisions for asset transfer when an individual participates in a long-term care partnership insurance program.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by implementing new asset transfer provisions.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will impact Medicaid recipients who participate in a long-term care partnership insurance program and make a transfer of resources. This administrative regulation will impact Medicaid recipients who receive institutionalized services and those who participate in a long-term care insurance partnership program. Not all institutionalized Medicaid recipients will be impacted, unless they participate in a long-term care insurance partnership program. Parties that may be impacted by the amendments to this administrative regulation are individuals receiving long-term care medical assistance, Insurance agents, Department for Medicaid Services, Department of Insurance, and Department for Community Based Services. The number of individuals is undetermined. Currently, there are approximately 27,000 individuals receiving Medicaid long-term care benefits. It is anticipated there will be an increase in the number of persons impacted as the baby boomer population increases.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Medicaid applicants receiving long-term care services will be subject to federal asset transfer rules implemented in this administrative regulation. The Department of Insurance regulates the long-term care partnership insurance program. The Department for Medicaid Services benefits when Medicaid recipients purchase a long-term care partnership insurance policy because in the long term it should result in reduction of financial burden to the Department for Medicaid Services. The Department for Community Based Services will determine the exclusions and protection from estate recovery on resources during the eligibility determination process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Regulated entities are not expected to experience any cost as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The benefit that Medicaid recipients will accrue as a result of the amendment to this regulation will be that participation in a long-term care partnership insurance program will provide provisions for exclusions from the eligibility determination and protection of estate recovery and this will allow an applicant that disposed of a resource for less than fair market value resulting in a transfer penalty to choose to apply the allowable exclusion, dollar-for-dollar, to the transferred resources for the purpose of avoiding a penalty.

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

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

(b) On a continuing basis: There is not expected to be any additional cost to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is expected to be necessary to implement the 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 fees.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because it applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 435, 42 U.S.C. 1395a, p

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's Indigent citizenry. KRS 205.6322 requires the cabinet to promulgate administrative regulations to prohibit the sheltering of assets in medical assistance long-term care cases.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1395e(c) and (d) requires state Medicaid agencies to take into account the transfer of assets in determining Medicaid eligibility.

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 impacted by this administrative regulation: This amendment to the administrative regulation will impact the Department for Medicaid Services, Department for Community Based Services, and the Department of Insurance.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation: This action is necessary in order to comply with requirements in HB 259 that was passed during the 2008 Kentucky General Session and resulted in a new section of chapter 205 and new sections of subchapter 14 of KRS chapter 204, specifically 204.14-640 to 204.14-644.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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. Changes are not expected in expenditures and revenues for state or local government agencies for the first full year that 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? An increase in revenue is not expected for the state or local government for the first year; however, in future years there should be a reduced financial burden to the Department for Medicaid Services.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? An increase in revenue is not expected for state or local government for subsequent years; however, for subsequent years there is ex-
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pected to be a reduction in the financial burden to the Department for Medicaid Services.

(c) How much will it cost to administer this program for the first year? An increase in cost to administer this program is not expected during the first year.

(d) How much will it cost to administer this program for subsequent years? An increase in cost to administer this program is not expected 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 AND FAMILY HEALTH SERVICES
Department for Medicaid Services
Division of Member Services
(Amendment)

907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.


NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 5, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(5) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky’s indigent citizenry. This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations.

Section 1. Definitions. (1) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid Program.

(2) "Community spouse" means the spouse of an institutionalized individual who resides at home in the community and is not living in a medical institution or nursing facility or participating in a home and community based services (HCBS) waiver program.

(3) "Community spouse maintenance standard" means the income standard to which a community spouse’s otherwise available income is compared for purposes of determining the amount of the allowance used in the posteligibility calculation.

(4) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of HCBS or a combination of both.

(5) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

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

(7) "Dependent child" means the child’s child, including a child gained through adoption, who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(8) "Dependent parent" means a parent of either member of a couple who lives with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(9) "Dependent sibling" means a brother or sister of either member of a couple, including a half-brother, half-sister or sibling gained through adoption, who resides with the community spouse and is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(10) "Excess shelter allowance" means an amount equal to the difference between the community spouse’s verified shelter expenses and the minimum shelter allowance.

(11) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(12) "Income" means money received from statutory benefits (Social Security, Veterans Administration pension, black lung benefits, railroad retirement benefits), pension plans, rental property, investments or wages for labor or services.

(13) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

(a) An inpatient in:
1. A nursing facility (NF);
2. An intermediate care facility for individuals with mental retardation or a developmental disability (ICF/MR/DD), the mentally retarded and developmentally disabled (ICF/MR/DD), or
3. A medical institution; or
(b) Receiving home and community based services (HCBS).

(14) "Institutionalized spouse" means an institutionalized individual who is in a medical institution or nursing facility, or participates in an HCBS waiver program, with a spouse who:

(a) Has a spouse who is not an institutionalized individual; and
(b) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(15) "Long-term care partnership insurance" is defined by KRS 304.14-640(1).

(16) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(17) "Medicaid institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for the mentally retarded and developmentally disabled.

(18) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(19) "Minor" means the couple’s minor child who:

(a) Is under age twenty-one (21);
(b) Lives with a community spouse; and
(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(20) "Monthly income allowance" means an amount:

(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and
(b) Equal to the difference between a spouse’s and other family member’s income and the appropriate maintenance needs standards.

(21) "Other family member" means a relative of either member of a couple who is:

(a) Minor or dependent child;
(b) Dependent parent; or
(c) Dependent sibling.

(22) "Other family member’s maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.

(23) "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state and local taxes; child support payments; or other court ordered obligation.

(24) "Resources" mean money and personal property or real property that an institutionalized individual or institutionalized individual’s spouse:

(a) Owns;
(b) Has the right, authority or power to convert to cash; and
(c) Is not legally restricted from using for support and maintenance.

(25) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

(26) "Significant financial distress" means a member of a
couples establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community. 

229(26) "Spousal protected resource amount" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.

229(28) "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of $80,000, to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

229(29) "Spouse" means a person legally married to another under state law.

229(30) "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guideline applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.

229(31) "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself in the community.

229(32) "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.

229(33) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

Section 2. Resource Assessment. (1) Pursuant to 42 U.S.C. 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources.

(2) Resources that have been protected from estate recovery, due to a long-term care partnership insurance policy, shall be excluded from the eligibility determination by the eligibility worker at the time of application, prior to the resources assessment.

(3) The assessment shall contain the total value of the joint resources and computation of the spousal share.

(4)(9) The department shall complete the assessment within forty (40) days after the following support of complete documentation or verification.

(5)(4) Upon completion of the resource assessment, each spouse shall:

(a) Receive a copy of the assessment, and

(b) Be notified that the right of appeal of the assessment shall exist at the time the institutionalized spouse applies for Medicaid.

Section 3. Protection of Income and Resources of the Couple for Maintenance of the Community Spouse.

(1) The following income provisions shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989:

(a) Except as provided in paragraph (b) of this subsection, during a month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.

(b) In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid, the provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.

(2) The following resource provisions shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989:

(a) Except as provided in subsection (4)(b) of this section, in calculating the resources of an institutionalized spouse at the time of an initial eligibility determination for a benefit under Medicaid, the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) The following protected amounts shall be deducted from a couple's combined countable resources at the time of the determination of initial eligibility of the institutionalized spouse:

1. The greater amount of:

a. The spousal share which shall not exceed a maximum of $50,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or

b. The state resource standard; and

2. If applicable, an additional amount transferred under a court support order; or

3. If applicable, an additional amount designated by a hearing officer.

(c) The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. The institutionalized spouse has assigned to the department his right to support from the community spouse;

2. The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment and the state has the right to bring a support proceeding against a community spouse without the assignment; or

3. The department determines that denial of eligibility would work as undue hardship.

(d) Separate treatment of resources after eligibility for benefits is established.

1. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for a Medicaid benefit, the resources of the community spouse shall not be deemed available to the institutionalized spouse.

2. Resources of the institutionalized spouse protected for the needs of the community spouse shall be considered available to the institutionalized spouse if the resources are not transferred to the community spouse within six (6) months of the initial eligibility determination.

(e) The equity value of an automobile in excess of the limits established by 907 KAR 1:645 shall not be included as a countable resource.

(3) The following provisions shall apply with regard to protecting income for the community spouse:

(a) After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of forty (40) dollars plus a mandatory withholding from income, including a mandatory payroll deduction that is a condition of employment and federal, state and local taxes that the government requires the payer to deduct before payment is made to the payee;

2. A community spouse monthly income allowance to the extent income of the institutionalized spouse is made available to, or for the benefit of, the community spouse;

3. A family allowance determined in accordance with the definition of other family member's maintenance standard; and

4. An amount for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse income allowance.

1. The community spouse income allowance shall be the sum of the standard maintenance amount and the excess shelter allowance, not to exceed the community spouse maintenance standard.

2. The community spouse maintenance standard shall be set at $1,500 per month to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

3. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse income allowance for the spouse shall not be less than the court ordered.

4. The following provisions shall apply with regard to a trans-
fter of resources from an institutionalized spouse:
(a) An institutionalized spouse may, without regard to the usual
prohibition against disposal of assets for less than fair market val-
ue, transfer to the community spouse, or to another for the sole
benefit of the community spouse, an amount equal to the spouse's
protected resource amount to the extent the resources of the Insti-
tutionalized spouse are transferred to, or for the sole benefit of,
the community spouse. The transfer shall be made as soon as prac-
ticable after the initial determination of eligibility, taking into account
the time necessary to obtain a court order under paragraph (c) of
this subsection.
(b) Establishment of the spousal protected resource amount.
1. The spousal protected resource amount shall be the greater of:
   a. The spousal share which shall not exceed a maximum of
      $60,000 to be increased for each calendar year in accordance with
      42 U.S.C. 1396r-5(g); or
   b. The state spousal resource standard.
2. The state spousal resource standard shall be set at $20,000;
3. For an individual, the spousal protected resource amount may
   be a higher amount established by a hearing officer, or a
   higher amount transferred under a court order as specified in para-
   graph (c) of this subsection.
(c) If a court has entered an order against an institutionalized
spouse for the support of a community spouse, the usual prohibi-
tion against disposal of assets for less than fair market value shall
not apply to the amount of resources transferred pursuant to the
order for the support of the spouse.
(d) Except for a transfer of resources to the community spouse
as specified in subsection (4) of this section, the transfer of re-
source policies established by 907 KAR 1:650 shall apply.
(e) (a) The department shall send the notice specified in para-
graph (b) of this subsection to both spouses upon:
1. Determination of eligibility for Medicaid of an institutionalized
   spouse; or
2. Request by:
   a. The institutionalized spouse;
   b. The community spouse; or
   c. A representative acting on behalf of either spouse.
(b) The notice shall state:
1. The amount of the community spouse monthly income al-
   lowance;
2. The amount of a family allowance, if any;
3. The method of computing the amount of the community
   spouse resources allowance; and
4. The spouse's right to a fair hearing in accordance with 907
   KAR 1:650.
(f) Both the institutionalized spouse and community spouse
shall be entitled to a fair hearing in accordance with 907 KAR
1:650 if the spouse is dissatisfied with the action of the agency
including determination of the following:
1. The community spouse monthly income allowance;
2. The amount of monthly income determined to be otherwise
   available to the community spouse;
3. The attraction of resources at the time of the initial eligibility
determination; or
4. The determination of the community spouse resource allow-
   ance.
(b) If either the institutionalized spouse or community spouse
establishes during the hearing that the community spouse needs
income above the level otherwise provided by the monthly main-
tenance needs allowance, due to an exceptional circumstance
resulting in significant financial duress, an amount adequate to
provide the necessary additional income shall be substituted for
the monthly maintenance needs allowance.
(c) If either spouse established during the hearing process that
the community spouse resource allowance, in relation to the
amount of income generated by an allowance, is inadequate to
raise the community spouse's income to the monthly maintenance
needs allowance, there shall be substituted for the community
spouse resource allowance an amount adequate to provide the
monthly maintenance needs allowance.

Section 4. Specified Individuals in Nursing Facilities. For an
individual who is aged, blind, or has a disability and who is in a
medical institution or nursing facility but does not have a communi-
ty spouse, the following requirements with respect to income limita-
tions and treatment of income shall apply:
(1) In determining eligibility, the appropriate medically needy
standard or special income level, disregards, and exclusions from
income shall be used. In determining patient liability for the cost of
institutional care, gross income shall be used as provided in sub-
sections (2) and (3) of this section.
(2) Income protected for basic maintenance shall be forty (40)
dollars monthly plus mandatory withholdings. Mandatory withold-
ings shall:
(a) Include minimum state and federal taxes; and
(b) Not include court-ordered child support, alimony, or similar
payment resulting from an action by the recipient.
(3) An amount excluded under a plan to achieve self-support
(PASS), as an income related work expense (IRWE) or blind work
expense (SWE) shall be considered an increased personal needs
allowance for a Medicaid recipient except a recipient for whom a
quarterly spenddown process as established in 907 KAR 1:650 is
applicable.
(4) Income in excess of the amount protected for basic main-
tenance shall be applied to the cost of care except as follows:
(a) Available income in excess of the basic maintenance al-
lowance shall be first conserved as needed to provide for the
needs of a minor child up to the appropriate family size amount
from the scale as established in 907 KAR 1:640, Section 2(1).
(b) Remaining available income shall be applied to the incurred
costs of medical and remedial care that are not subject to payment
by a third party (except that the incurred costs may be reimbursed
under another public program of the state or political subdivision
of the state), including Medicare and health insurance premiums or
medical care recognized under state law but not covered under the
state's Medicaid plan.
(c) The basic maintenance standard allowed the individual
during the month of entrance into or exit from the nursing facility
shall take into account the home maintenance costs.
(5) If an individual loses eligibility for a supplementary payment
due to entrance into a participating nursing facility, and the sup-
plementary payment is not discontinued on a timely basis, the
amount of an overpayment shall be considered as available income
to offset the cost of care to the Medicaid Program.
(6) A supplemental security income (SSI) or state supplemen-
tary payment received by a specified institutionalized Medicaid
eligible individual in accordance with 42 U.S.C. 1382(e)(1)(G) shall
be excluded from consideration as either income or a resource.
The payment shall not be used in the posteligibility process to in-
crease the patient liability.
(7) Ninety (90) dollars of Veteran's Administration (VA) benefits
received by a veteran or the spouse of a veteran shall be excluded
from consideration as income. The ninety (90) dollars shall not be
counted in the eligibility or the posteligibility calculation.
(8) Veteran's Administration payments for unmet medical ex-
penditures are included in the Medicaid eligibility determination for
a veteran or the spouse of a veteran residing in a nursing facility.
(a) Veteran's Administration payments for unmet medical ex-
penditures (VMEPs) and aid and attendance (A&A) shall be excluded
in the posteligibility determination for a veteran or the spouse of
a veteran residing in a nursing facility.
(b) Veteran's Administration payments for unmet medical ex-
penditures (VMEPs) and aid and attendance (A&A) shall be not be
excluded in the posteligibility determination process for a veteran
or the spouse of a veteran residing in a state-operated nursing facility
(10) Income placed in a qualifying income trust established in
accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 1:650, Sec-
tion 3(5), shall be counted in the posteligibility determination.

Section 5. Special Needs Contributions for Institutionalized
Individuals. (1) A voluntary payment made by a relative or other
party on behalf of a nursing facility resident or patient shall not be
considered as available income if made to obtain a special privi-
lege, service, or item not covered by the Medicaid Program.
(2) A special service or item shall include television or tele-

phone service, private room or bath, or a private duty nursing service.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services, Administrative Hearings Branch Conference Room, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 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 31, 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: Debbie Keith or Cheryl Bentley (502) 564-6204
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to determine Medicaid financial eligibility for the indigent population in Kentucky.
(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 complying with KRS 205.520(3).
(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 complying with KRS 205.520(3) and 504.994(1).
(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 provides provisions for resources that have been protected from estate recovery and excluded from the eligibility determination by the eligibility worker at the time of application, prior to the resources assessment, due to a long-term care partnership insurance policy.
(b) The necessity of the amendment to this administrative regulation: The amendment of this administrative regulation is necessary to allow resources that have been protected from estate recovery, due to a long-term care partnership insurance policy, to be excluded from the eligibility determination by the eligibility worker at the time of application, prior to the resources assessment.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing provisions for resources that have been protected from estate recovery and excluded from the eligibility determination. The Department for Medicaid Services is granted authority to implement this action by the authorizing statutes.
(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 providing provisions for resources that have been protected from estate recovery and excluded from the eligibility determination.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will impact Medicaid recipients who receive institutionalized services and those who participate in a long-term care insurance partnership program. Not all institutionalized Medicaid recipients will be impacted, unless they participate in a long-term care insurance partnership program. Parties that may be impacted by the amendments to this administrative regulation are individuals receiving long-term care medical assistance, insurance agents, Department for Medicaid Services, Department of Insurance, and Department for Community Based Services. The number of individuals is undeterminable. Currently, there are approximately 27,000 individuals receiving Medicaid long-term care medical benefits.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Medicaid recipients may gain estate recovery protection when they purchase a long-term care partnership insurance policy. The Department of Insurance regulates the long-term care partnership insurance program. The Department for Medicaid Services benefits when Medicaid recipients purchase a long-term care partnership insurance policy because it should result in reduced financial hardship to the Department for Medicaid Services within future years.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Regulated entities are not expected to experience any cost as a result of the amendment.
(c) As a result of the changes, what benefits will accrue to the entities identified in question (3). Medicare recipients may have their resources protected from estate recovery, due to a long-term care partnership insurance policy. The eligibility will be determined by the eligibility worker at the time of application, prior to the resource assessment. The Department for Medicaid Services benefits when Medicaid recipients purchase a long-term care partnership insurance policy because it should result in reduced financial hardship to the Department for Medicaid Services within future years.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional cost to implement this administrative regulation.
(b) On a continuing basis: There is not expected to be any additional cost 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: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees nor funding is expected to be necessary to implement the 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 any fees or directly or indirectly increase any fees.
(9) Tiering: Is being applied? Tiering is not applicable in this administrative regulation because the regulation applies equally to all these individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a, d, r-s contains the federal mandate for all state Medicaid programs to seek recovery against the estates of recipients who were permanently institutionalized or received cer-
tian institutional services at age 55 or older and mandates specific to a spouse.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the required provisions of medical assistance to Kentucky's indigent citizenry. KRS 205.6322 requires the cabinet to promulgate administrative regulations to prohibit the sheltering of assets in medical assistance long-term care cases

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396r-5(c)(1)(B) mandates an assessment of the joint resources of the institutionalized spouse and the community spouse to be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of the relevant documentation of resources.

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 impacted by this administrative regulation? The Department for Medicaid Services, Department for Community Based Services, and Department of Insurance.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary in order to comply with requirements in HB 259 that was passed during the 2008 Kentucky General Session and resulted in a new section of chapter 205 and new sections of subchapter 14 of KRS chapter 304, specifically 304.14-60 to 304.14-64.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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? An increase in revenue is not expected for the state or local government for the first year; however, in future years there should be a reduced financial burden to the Department for Medicaid Services.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? An increase in revenue is not expected for the state or local government for the subsequent years; however, for subsequent years there is expected to be a reduction in the financial burden to the Department for Medicaid Services.

(c) How much will it cost to administer this program for the first year? An increase in cost to administer this program is not expected during the first year.

(d) How much will it cost to administer this program for subsequent years? An increase in cost to administer this program is not expected 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 Aging and Independent Living**

**Division of Operations and Support**

**(Amendment)**

**910 KAR 1:240. Certification of assisted-living communities.**

RELATES TO. KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209 030, 216 300(1), 216 595, 216.789, 216 793

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(4) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted living communities.

Section 1. Definitions (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(2) "Activities of daily living" is defined by KRS 194A.700(1).

(3) "Assisted-living community" is defined by KRS 194A.700(3).

(4) "Client" is defined by KRS 194A.700(4).

(5) "Certification review" means the process of reviewing applicants and issuing certification for an assisted-living community.

(6) "Deny" is defined by KRS 194A.700(5).

(7) "Functional needs assessment" means the client data required by KRS 194A.713(1)(a) to be in a lease agreement

(8)(9) "Instrumental activities of daily living" is defined by KRS 194A.700(7).

(10)(11) "Living unit" is defined by KRS 194A.700(8).

(10)(11) "Temporary health condition" means a condition that affects a client and for which health services are being provided as referred to in KRS 194A.711; and

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility; or

(b) The client loses mobility after entering a lease agreement and is not expected to recover and the provided health services are hospice or similar end-of-life services.

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, within at least sixty (60) days prior to a scheduled opening, file with the department:

(a) If completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(1)(c);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);
2. Central dining area;
3. Laundry facility;
4. Central living room; and
(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(6);
2. Made payable to the Kentucky State Treasurer; and
3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:

(a) Calculating the fee for a year by computing twenty (20) dollars per living unit or the $300 minimum set forth in KRS 194A.707(6), whichever is greater, but no more than the $1600
maximum set forth in KRS 194A.707(6),
(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee, and
(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:
(a) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and
(b) Submits to the department annually by July 1:
1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;
2. The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and
3. The nonrefundable certification fee required by Section 2(e) of this administrative regulation.
(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:
(a) In accordance with Section 2(1) of this administrative regulation; and
(b) Not less than sixty (60) days prior to the increase.
(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit prorated in accordance with Section 2(2) of this administrative regulation.
(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.
(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:
(a) By following the procedures in Section 3 of this administrative regulation; and
(b) Within thirty (30) days of the change of ownership.
(5) An assisted-living community shall:
(a) Notify the department in writing:
1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or
2. At least sixty (60) days prior to termination of operation, and
(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:
1. Fire;
2. Natural disaster; or
3. Closure by local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:
(1) Consider the application process complete,
(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1 Assisted-Living Community Certification Application; and
(3) Conduct an on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:
(1) Consider the application process complete;
(2) Conduct an unannounced on-site review within one (1) year of receipt of the DAIL-ALC-1, Assisted-Living Community Certification Application.

Section 7. On-Site Review of an Assisted-Living Community.
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complies with KRS 194A.700-729 and 216.789(1).
(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall [schedule and] hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Assisted-living On-Site Review Findings. (1) The department shall:
(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and
(b) Submit the finding of noncompliance to the applicant:
1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction; and
2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.
(b) The assisted-living community shall specify in the plan the dates by which the noncompliance (noncompliance) shall be corrected.
(c) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:
(a) Whether the plan of correction is approved or not approved; and
(b) The reasons for the department’s decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.
(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked (shall be denied), the department shall notify the assisted-living community within ten (10) business days of the determination and with the:
(a) Opportunity for an informal dispute resolution meeting:
1. Between the:
   a. Department; and
   b. [A representative of the assisted-living community;]
2. To be held within fifteen (15) days of the assisted-living community’s receipt of the notice; and
3. To address a dispute (an issue of noncompliance in question), including the provision of additional documentation or support materials; and
(b) Appeal rights as specified in Section 11 of this administrative regulation if:
1. An informal dispute is not requested; or
2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:
(a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and
(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 9(2)(a)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(7).

Section 9. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:
(a) The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by:
1. The individual’s employment application; or
2. A criminal record check and if the assisted-living community fails to immediately terminate the employment upon the department’s finding; or
2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or
(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 8(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:
(a) Fails to apply for certification as specified in Section 2(1), 3(1), or 4(1) of this administrative regulation;
(b) Submits a completed DAIL-ALC-1 Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years; or
(c) Fails to submit a completed DAIL-ALC-1 Assisted-Living Community Certification Application within thirty (30) days of July 1 annually.

(d) Fails to implement its most recent approved plan of correction.

1. Under current ownership; and
2. Within the plan of correction’s specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction.

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 8(9) of this administrative regulation:
1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:
   a. Email;
   b. Facsimile transmission;
   c. Delivery to the department by hand;
   d. United States mail;
   e. Courier service;
2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:
   a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.703(4); and
   b. Submit a written response to the department that confirms the assisted-living community took the required action with submission occurring via:
      a. Email;
      b. Facsimile transmission;
      c. Delivery to the department by hand;
      d. United States mail;
      e. Courier service; or
3. Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:
1. Notifies the assisted-living community in writing that the client remains a danger; and
2. Does not accept the assisted-living community’s written
response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e) of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting;

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 11 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a) A danger is unsubstantiated; or

(b) The danger has been eliminated; or

(5) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 11 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723(1).

(b) The fines shall be paid as specified in Section 10(1) of this administrative regulation.

Section 10. Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.728, shall be $250.

Section 11. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, [as specified in Section 9 of the administrative regulation], the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection 5(b) of this section, not to exceed an additional fifteen (15) days.

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

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", edition 11/07;

(b) "DAIL-ALC-2, Assisted-Living Community Certification Checklist", edition 2/09; 11/07; and

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Nonconformance [Non-compliance] and Plan of Correction", edition 2/06; and

(d) "DAIL-ALC-4, Statement of Danger, edition 2/09; 11/07")

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

DEBORAH S. ANDERSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008, at 9 a.m. in the Administrative Hearing Branch Conference Room, 1st Floor of the CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 close of business December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930 extension 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for certification of assisted-living communities.

(b) The necessity of this administrative regulation: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 194A.050(1) which states the cabinet shall promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation provides an initial and annual certification review process for assisted-living communities pursuant to KRS 194.707(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds requirements for an assisted-living community to comply with if their client is found to be a danger upon a complaint or certification visit.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to help ensure that an assisted-living community is prepared to handle a danger issue.
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(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes a process that may revoke or deny an assisted-living community’s certification in accordance with KRS 194A.707(1) if the department verifies a client residing in an assisted-living community is a danger and the danger is not eliminated.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes that certification may be denied or revoked if a danger is verified and an assisted-living community refuses to eliminate the danger after giving the opportunity for an informal dispute resolution or a hearing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 94 assisted-living communities throughout the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The assisted-living community will, within forty-eight (48) hours, unless issued on a Friday and then at 4:30 p.m. of the next business day, of receiving the department’s written findings that a client is a danger, submit a written response to the department confirming how the danger has been eliminated or why the danger is unsubstantiated, or request a move-out notice from the department and begin assisting the client to find appropriate living arrangements pursuant to KRS 194A.404(4) and submit a written notice to the department that confirms the assisted-living community took the required action. If the department verifies the danger and the assisted-living community fails to implement these procedures, they will still have a right to an informal dispute resolution meeting or hearing if requested before denial or revocation may take place.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Correction or removal of a danger will increase safety to the other residents of an assisted-living community. Also, the assisted-living communities will have better guidelines for certification, denial and revocation of certification.

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

(a) Initially: FY 09 $118,262.69

(b) On a continuing basis: FY 10 $120,000 approximately

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds from certification fees of $88,939.92 and additional general funds necessary to operate the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The fees in this administrative regulation are governed by KRS 194A.707(6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes certification fees within the provisions found in KRS 194.707(6).

(9)Tiering: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 194A.050(1), 194A.707(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate $88,939.92 in certification fees for FY 09. The amendment will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate $88,939.92 in certification fees in subsequent years. The amendment, itself, will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? FY 09 - $118,262.69.

(d) How much will it cost to administer this program for subsequent years? Approximately $120,000 for FY 09.

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 Violence Prevention Resources

(Amendment)


STATUTORY AUTHORITY: KRS 194A.050(1), 403.7505[EO 2004-726]

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 quality 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[EO 2004-726, effective July 9, 2004, created the Cabinet for Health and Family Services and placed the Department for Mental Health and Mental Retardation within the cabinet] KRS 403.7505 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic violence batterers[offenders]. This administrative regulation establishes [provider] certification requirements, standards for services, and imposes reporting requirements for a domestic violence batterer intervention provider[offender].

Section 1. Definitions. (1) "Appellant" means an applicant or a provider who requests:

(a) An informal resolution meeting in accordance with Section 13 of this administrative regulation; or

(b) An administrative hearing in accordance with Section 14 of this administrative regulation.

(2) "Applicant" means an individual applying for certification as a domestic violence batterer intervention provider[offender]. "Application" means the Application for Certification as a Provider for Court-Ordered Domestic Violence Offender-Treatment and required attachments.
(3) "Assessment" means an evaluation of a batterer in accordance with Section 9(1) of this administrative regulation. An offender’s: 
(a) Characterization; 
(b) History of abusive behavior; 
(c) Risk of harm to self or others; and 
(d) Capacity to benefit from treatment.

(4) "Associate provider" means an individual certified by the cabinet to provide domestic violence batterer intervention services in accordance with Section 4(1) or 4(2) of this administrative regulation, only under the direct supervision of an autonomous provider.

(5) "Autonomous provider" means a professional certified by the cabinet in accordance with Section 4(2) of this administrative regulation for unsupervised clinical practice in a domestic violence batterer intervention program.

(6) "Batterer" means an individual who: 
(a) Has been charged with or convicted of a criminal offense related to domestic violence; or 
(b) Has been found in a protective order issued by a court pursuant to KRS 403.740, 403.750(1), 508.155(4); or 
(c) Has been named as a domestic violence perpetrator in a substantiation made by the Department for Community Based Services.

(7) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(8) "Client" means a battered offender who has been admitted to a program.

(9) "Court" means a district, family, or circuit court of the Commonwealth of Kentucky.

(10) "Court-ordered" means subject to an order entered by a district, family, or circuit court judge for a battered offender to be assessed by a provider to determine the battered offender’s eligibility for admission to a program or to participate in a program.

(11) "Department" means the Department for Community Based Services or its designee.

(12) "Domestic violence" is defined in KRS 403.720(1).

(13) "Offender" means an individual who: 
(a) Has been charged with or convicted of a criminal offense related to domestic violence; or 
(b) Is a respondent in a protective order issued by a court pursuant to KRS 403.740, 403.750(1), or 508.155(4).

(14) "Domestic violence shelter" means a program meeting standards of 922 KAR 5.040.

(15) "Intervention" means individual or group counseling and education based upon a core curriculum that focuses on cessation of domestic violence.

(16) "Program" means services provided in accordance with Sections 5 through 12 of this administrative regulation to battered offenders who have been referred by a court for assessment or intervention related to domestic violence.

(17) "Provider" means an associate provider or an autonomous provider.

(18) "Sanction" means a compulsory or restrictive action, such as: 
(a) A prohibition, requirement, limitation, or other condition affecting the freedom of a person; 
(b) Withholding of relief; 
(c) Imposition of a penalty or fine; 
(d) Destruction, seizure, or withholding of property; 
(e) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; or 
(f) Revocation or suspension of a license.

(19) "Screening" means the action taken by a provider to determine a battered offender’s eligibility for admission to the program.

(20) "Treatment" means individual and group counseling and education based upon a core curriculum that focuses on cessation of domestic violence.

(21) "Victim advocate" is defined by KRS 421.570.

Section 2. Certification Procedures. (1) An individual may apply to be certified as an associate provider or an autonomous provider by submitting a DVP-R-001 Application for Batterer Intervention Provider Certification to the department.

(2) If an applicant is not subject to denial or revocation for a reason established in Section 3 of this administrative regulation, the department shall certify the applicant as an: 
(a) Associate provider if the applicant meets the qualifications specified in Section 4(1) of this administrative regulation; or 
(b) Autonomous provider if the applicant meets the qualifications specified in Section 4(2) of this administrative regulation.

(3) (a) No later than sixty (60) days after receiving an application or receiving additional documentation, the department shall notify an applicant in writing: 
(1) Certification is granted or denied; or 
(2) The department is retaining the application in accordance with Section 3(2) of this administrative regulation.

(b) If an applicant is not subject to denial or revocation for a reason established in Section 3 of this administrative regulation, the department shall certify the applicant as: 
An associate provider if the applicant meets the qualifications specified in Section 4(1) of this administrative regulation; or 
An autonomous provider if the applicant meets the qualifications specified in Section 4(2) of this administrative regulation.

(4) An individual may apply to be certified as an associate provider or an autonomous provider by submitting a completed application to the Domestic Violence Program Administrator for Adult Services, Division of Mental Health.

The notice in accordance with paragraph (a) of this subsection shall: 
1. [a(1)] Specify the effective date of certification, if applicable; 
2. [a(2)] Specify the basis of the denial of the application, if applicable; 
3. [e] Specify additional documentation that is required if the department retains the application in accordance with Section 3(2) of this administrative regulation; and 
4. [d] Inform the applicant of the right to appeal a denial in accordance with the: 
[a] Informal resolution process established in Section 13 of this administrative regulation; and 
[b] [the] Administrative hearing process established in Section 13 of this administrative regulation.

(4) Certification as a provider shall be effective for two (2) years.

(5) (a) Unless a provider’s certification has been revoked in accordance with Section 3 of this administrative regulation, the department shall renew the certification of a provider upon request.

(b) If the provider submits verifiable documentation of completion of twelve (12) clock hours of at least sixteen (16) hours per year of continuing education related to domestic violence, pursuant to Section 4(9) of this administrative regulation, shall be required for certification renewal.

(c) The department shall perform a random audit on five (5) percent of the certification renewals to monitor provider compliance with paragraph (a) of this subsection unless certification has been revoked in accordance with Section 3 of this administrative regulation.

(6) The department may solicit references from individuals outside the department regarding the certification of providers.

Section 3. Denial or Revocation of Certification. (1) The department shall deny certification to an applicant if the provider determines that: 
(a) The applicant’s DVP-R-001 application is incomplete; 
(b) The documentation of qualifications is insufficient to demonstrate that the applicant meets the applicable requirements in Section 4 of this administrative regulation; or 
(c) The department cannot verify the authenticity of the documentation of qualifications submitted in the application; or
(d) The core curriculum submitted fails to meet the requirements specified in Section 10(7)(f) of this administrative regulation.

(2) If the department denies certification in accordance with subsection (1)(a) of this section, the department may retain the application and permit the applicant to submit additional documentation in accordance with a notice provided pursuant to Section 2(3)(b)(8)(e) of this administrative regulation, if the department denies certification in accordance with subsection (1)(a) of this section.

(3) The department [cabinet] shall deny certification to an applicant and shall revoke the certification of a provider upon its determination that the applicant or provider:
   (a) Within the past ten (10) years, has been convicted of, or pled guilty to, or completed the service of a sentence imposed to:
      1. Criminal homicide pursuant to KRS Chapter 507;
      2. Assault or a related offense pursuant to KRS Chapter 508; or
      3. Kidnapping or a related offense pursuant to KRS Chapter 509;
   4. A sexual offense pursuant to KRS Chapter 510;
   5. Burglary or a related offense pursuant to KRS 511.020 through 511.040;
   6. Criminal damage to property pursuant to KRS 512.020;
   7. Robbery pursuant to KRS Chapter 513;
   8. Falsifying business records as defined in KRS 517.050 if the conviction was in relation to the applicant's clinical practice;
   9. Incest as defined in KRS 530.020;
   10. Endangering the welfare of a minor as defined in KRS 530.060;
   11. Unlawful transaction with a minor as defined in KRS 530.064, 530.065, or 530.070;
   12. Sexual exploitation of a minor pursuant to KRS 531.300 to 531.370;
   13. Criminal attempt as defined in KRS 506.010, to commit an offense identified in paragraph (a);
   14. Distribution of obscene materials involving a minor pursuant to KRS 531.030 or 531.040; or
   15. Promoting prostitution pursuant to KRS [529.030] 529.040 [or 629.050];
   16. Arson as defined in KRS Chapter 513; or
   17. Fetal homicide as defined in KRS Chapter 507A;
(b) Has had an alcohol or other drug abuse problem as defined in KRS 222.050(3)(h) within the two (2) years prior to the date of the application, or engages in alcohol or drug abuse as defined in KRS 222.050(3)(h) anytime after the effective date of certification;
(c) Has had an alcohol or other drug abuse problem as defined in KRS 222.050(3)(h) within the two (2) years prior to the date of the application, or engages in alcohol or drug abuse as defined in KRS 222.050(3)(h) anytime after the effective date of certification;
(d) Is subject to a current court order restraining or enjoining the applicant from providing a service authorized by licensure or certification; or
(e) Has been convicted of an offense described in KRS Chapter 529 within the five (5) years prior to the date of the application or anytime after being certified;

(3) The department may deny an application or revoke the certification of a provider who:
(a) Has had a sanction applied against or a revocation of a professional license or certification held by the applicant or provider at any time in the two (2) years prior to the date of an application or any time after being certified;
(b) Currently has a sanction applied against a professional license or certification;
(c) Has provided domestic violence batterer assessment or intervention[offender-assessment or treatment] services in violation of Section 5(1) or (2) of this administrative regulation;
(d) Has failed to implement a corrective action plan in accordance with Section 12(6) or (7)(4)(a) or (b) of this administrative regulation;
(e) Has failed to follow the curriculum submitted in the application or submitted and approved in accordance with Section 10(11)(5)(b) of this administrative regulation;
(f) Has failed to meet a requirement established in Sections 2 through 11 of this administrative regulation;
(g) Has provided information that the department:
   1. Is unable to verify; or
   2. Has determined to be incorrect; or
(h) Has failed to meet the data submission requirements as specified in Section 6(10) of this administrative regulation.

(5) The department shall revoke the certification of a provider that fails to meet the continuing education[maintenance] requirement specified in Section 6(9) of this administrative regulation.

(6)(a) [If a provider's certifications are revoked, the department shall notify a provider in writing [if certification is revoked].
(b) [The notice in accordance with paragraph (a) of this section shall:
1. [Specify the effective date that certification shall be revoked;]
2. [Specify the basis of the determination to revoke a certification; and]
3. [Inform the provider of the right to appeal the revocation in accordance with the;]
   a. Informal resolution process established in Section 13 of this administrative regulation; and
   b. [the] Administrative hearing process established in Section 14 of this administrative regulation.

(7) A provider whose certification is revoked in accordance with subsection (3)(b) or (e) of this section shall be ineligible for certification until the fifth anniversary of the effective date of the revocation.

(8) A provider whose certification is revoked in accordance with subsection (3)(c) of this section shall be ineligible for certification until the second anniversary of the effective date of the revocation.

(9) [A provider whose certification is revoked in accordance with subsection (3)(c) of this section shall be ineligible for certification until the fifth anniversary of the effective date of the revocation.

(10) The department shall renew the certification of a provider whose certification has been revoked in accordance with Section 6(9) of this administrative regulation upon the department's receipt of documentation that the provider has met the requirement of Section 2(5) of this administrative regulation.

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider shall be:
(a) A bachelor's degree from an accredited university or college;
(b) Completion of twenty-four (24) clock hours of specialty training in domestic violence including:
   1. Characteristics and dynamics of domestic violence;
   2. Clinical profiling of domestic violence batterers[offenders];
   3. Risk assessment and lethality of domestic violence batterers[offenders];
   4. Intervention of batterers[Treatment of offenders];
   5. Effective services for victims and child witnesses of domestic violence;
   6. Safety planning for victims, and
   7. Criminal sanctions for domestic violence and legal remedies for victims;
(c) Two (2) [Four- to] four years of full-time post-baccalaureate degree work experience totaling at least 4,000[8000] hours that shall include general clinical experience or direct case experience related to domestic violence;
(d) A written agreement to receive supervision, which shall include:
   1. Case discussion;
   2. Review of reading assignments;
   3. Skill building; [and]
   4. Review of an audio or video recording of assessment and intervention[assessment or treatment] performed by the associate provider; and
(e) Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant.
(2) The qualifications of an autonomous provider shall be:
(a) [At least] A master's degree from an accredited university or college;
(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:
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1. Psychology in accordance with KRS Chapter 319;
2. Social work in accordance with KRS 335.080 or 335.100;
3. Medicine in accordance with KRS Chapter 311 if board eligible in psychiatry and neurology;
4. Psychiatric nursing in accordance with KRS
202(12)(d);
5. Marriage and family therapy in accordance with KRS
335.300 to 335.399;
6. Professional counseling in accordance with KRS 335.500 to
335.599; 
7. Art therapy in accordance with KRS 309.130 to 309.1399; or
8. Alcohol and drug counseling in accordance with KRS
309.080 to 309.089.
(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of an autonomous provider[a-professional] who is licensed or certified in accordance with paragraph (b) of this subsection of which 120 hours of the time shall have been with batterers/offenders and thirty (30) hours with victims;
(d) Completion of the training specified in subsection (1)(b) of this section;
(e) A written recommendation for certification from the autonomous provider who[professional that] provided the supervision required by paragraph (c) of this subsection; and
(f) Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant.

(3) The cabinet shall grant certification as an associate provider to an applicant:
(a) Meeting or exceeding the standards of subsection (1) of this section;
(b) Holding a current certificate from another state; and
(c) Being in good standing with the other state’s certifying agency.

(4) The cabinet shall grant certification as an autonomous provider to an applicant:
(a) Meeting or exceeding the standards of subsection (2) of this section;
(b) Holding a current certificate from another state; and
(c) Being in good standing with the other state’s certifying agency.

(5) An associate provider may apply for certification as an autonomous provider:
(a) After two (2) years experience and a minimum of 4,000 hours working in a batterer intervention program; and
(b) Upon recommendation of the autonomous provider supervising the associate provider.

Section 5. Scope of Practice and Supervision Requirements.
(1) Under the supervision of an autonomous provider, an associate provider may[under the supervision of an autonomous provider]:
(a) Screen, assess, plan, and provide batterer intervention[treatment];
(b) Consult with a court, prosecutor, law enforcement official, mental health provider, and others regarding the assessment of and intervention with[the treatment of] a client; or
(c) Contact a victim of a client in accordance with Section 7 of this administrative regulation.

(2) An associate provider who provides a service in accordance with subsection (1) of this section shall participate in at least one (1) hour per week of clinical face-to-face supervision pursuant to the written agreement established in Section 4(1)(d) of this administrative regulation.

(3) An autonomous provider may provide screening, assessment, intervention[treatment], and consultation independently and supervise an associate provider if an autonomous provider has:
(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a professional licensing board specified in Section 4(2)(b) of this administrative regulation, or by the cabinet; and
(b) Practiced batterer intervention[domicile violence offender treatment] for a period of at least one (1) year.

(4) A certified autonomous provider who supervises an associate provider:
(a) Shall:
(1)(a) Provide the supervision required by subsection (2) of this section; and
2.(b) Ensure that an associate provider performs a service in accordance with Sections 4, 5(1), 6, 7, 8, 9, 10, [and] 11, and 12(7) of this administrative regulation; and
(b)(b) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) A court-ordered service shall be based on the following premises:
(a) Domestic violence constitutes a health hazard to a victim who may experience short and long-term effects from the abuse.
(b) Immediate and long-term cessation of the domestic violence is the priority purpose for batterer intervention[treatment];
(c)(e) Domestic violence in any form is criminal behavior.
(d) Batterer intervention[court]—Treatment shall be designed to enhance and promote the safety of a victim including a spouse, a live-in partner, a child, or other family member.
(e)(d) A victim is not responsible for the violent behavior of a batterer[an offender] and a provider shall not promote the concept of mutual responsibility in explaining domestic violence.
(f)(e) [The] The batterer[offender] is accountable for domestic violence, which is the product of individual choice and learned traits. The batterer[offender]’s psychopathology, substance abuse, other disorder, or cultural background is not an explanatory cause of domestic violence but can influence the batterer[offender] behavior.
(g)(g) [The] Cooperation and service coordination between the criminal justice system, the department[+Community-Based Services], a victim’s advocate, a domestic violence shelter[support services], and a chemical dependency or mental health professional may be required to assure effective treatment and the safety of a victim or a potential victim.
(2) A provider shall give each batterer[offender] and client a written document that explains the complaint process of the program.
(3) A provider shall:
(a) Treat a batterer[an offender] and a client or victim with respect and dignity at all times; and
(b) [shall] Not discriminate against a batterer, a client, or a victim[an offender] based on race, ethnicity, gender, age, religion, or disability.
(4)(a) A batterer[an offender] and a client or victim shall have the right to complain verbally or in writing to the:
1. Provider;
2. (if the Referring court; or
3. or the) Cabinet;
(b) A provider shall not take adverse action against a batterer[an offender] a client or a victim who makes a complaint.
(5) A provider shall:
(a) Comply with 46 C.F.R Part 46, and any applicable state [ethical] board enjoins[ethical and state law] pertaining to research with a human subject; and
(b) Protect the privacy of a batterer or a client who gives consent to participate in provider sponsored research.
(6) A provider shall:
(a) Provide a clean and comfortable facility which shall be accessible to the handicapped; and
(b) Meet the requirements of 815 KAR 10:060, relating to standards of fire safety.
(7) The provider shall comply with federal and state law applicable to the confidentiality of a client record.
(8) The provider shall establish an individual record for each batterer[offender] who receives a court-ordered service. The record shall:
(a) Document each service provided to the batterer[offender]; and
(b) Demonstrate that the services meet the requirements of Sections 6 through 11 of this administrative regulation.
(9) A provider shall accrue a minimum of twelve (12) hours of continuing education related to domestic violence
during the two (2) year period for renewal.

(10) Providers certified pursuant to Section 2 of this administrative regulation shall collect and submit information [on a quarterly basis] to the department or its designee in accordance with the purpose of tracking, monitoring, and evaluating the quality of services for court-ordered domestic violence offender. A provider shall:
(a) Collect information required by KRS 403.7505, and
(b) Submit information required by KRS 403.7505.

Section 7. Contact with a Victim. (1) In the provider's professional opinion, if contacting a domestic violence victim would not increase the risk of harm to the victim or others, [if an offender consents to a victim's participation in his assessment or treatment] a provider may attempt to contact the victim and shall:
(a) Attempt to contact the victim within five (5) days of the offender's admission to the program;
(b) Offer the victim an opportunity to participate in the assessment of the batterer [or treatment of the offender] by disclosing information about the batterer [offender] and the circumstances of the domestic violence;
(c) Assure the victim the source of the information will not be revealed to the batterer;
(d) Interview a victim who consents to participate in an assessment or treatment of the offender;
(e) Provide the victim information about the program, its possibility of services, the limitations of the program, the victim's role in the assessment and treatment, and the degree to which the batterer's [offender's] participation may [may not] result in increased safety for the victim; and
(f) Make reasonable efforts to refer a victim to a domestic violence shelter, victim advocate, or another program designated to provide specialized victim services [educate the victim about services available to assist in meeting a need for current or future protection of the victim or a family member].
(2) A provider shall document each [effort to] contact with a victim.

A provider shall not contact a victim in the presence of a batterer.

(4) If a victim does not consent to participate, withdraws consent to participate, or refuses to provide information about a batterer or a client, a provider shall not attempt to coerce or persuade the victim to participate. [An interview of a victim shall not be conducted in the presence of the offender.] A provider shall not attempt to coerce or persuade the victim to participate if a victim does not consent to participate, withdraws consent to participate, or refuses to provide information about an offender or a client.

Section 8. Screening Procedures. (1) A provider shall establish:
(a) Eligibility criteria for participation in a program which:
1. Requires that a batterer [offender] sign an authorization to disclose to a victim the batterer [offender]'s failure to participate in or discharge from the program;
2. May include a batterer [offender]'s admission of responsibility for a domestic violence related offense; and
3. Shall [may not] be based solely on the batterer's ability [offender's] inability to pay for services;
(b) A procedure to accept a referral from a court following a charge of a domestic violence related offense or as a condition of a protective order issued pursuant to KRS 403.740, 403.750(1), or 508.155(4); and
(c) A procedure for notifying the referring court, if a batterer [offender] is ineligible for the program. The notice shall:
1. Specify the reason a batterer [offender] is determined to be ineligible in accordance with the eligibility criteria established by the provider pursuant to paragraph (a) of this subsection;
2. Specify each referral made in accordance with Section 9(3) and (4) of this administrative regulation, if any;
3. Be made no later than five (5) days after the determination is made;
4. Recommend a service more likely to benefit the batterer [offender], in the provider's professional opinion; and

5. Recommend that the court notify a victim pursuant to KRS 403.7505(3)(e) that the batterer [offender] is ineligible for the program.
(2) A provider shall inform a batterer [offender] of the following information prior to the batterer [offender] receiving an assessment or intervention [treatment]:
(a) The requirement for confidentiality of information and the limit on confidentiality including:
1. The duty of a provider to warn and protect an intended victim of a threat to harm, as required by KRS 202A.400;
2. The requirement to report abuse in accordance with KRS 209.030 and 520.030; and
3. The fact that information disclosed to the provider or to another client may be used against the batterer [offender] in a civil or criminal proceeding;
(b) The requirement of a court order, a statute, or an administrative regulation which imposes a duty upon the provider to disclose information or make a report pertaining to the batterer [offender] or the client to:
1. A court;
2. A prosecutor;
3. A probation or parole officer;
4. A law enforcement agent;
5. The victim; or
6. Another person or organization that may be involved in the assessment of the batterer or the intervention [treatment] of the client;
(c) The information provided in accordance with paragraph (b) of this subsection, which shall include:
1. The name of the person, if known, [or] the title of the agency or organization to whom information shall be disclosed, or to whom a report shall be made;
2. The basis of the duty to disclose information or to make a report; and
3. The condition under which information shall be disclosed or a report made;
(d) The batterer [offender]'s responsibility to pay for an assessment or intervention [treatment] in accordance with KRS 403.7505(3)(g), the cost to the batterer [offender], and the provider's policy regarding failure to pay;
(e) The expected length of intervention [treatment] and the procedure for voluntary and involuntary discharge from the program; and
(f) An explanation of the provisions in Section 6 of this administrative regulation;
(g) A description of the assessment and intervention [treatment] that will be provided to the batterer [offender] including the requirements for participation; and
(h) Notification that, at the discretion of the court, failure to comply with the program may result in a citation for contempt of court;
(i) An explanation of the procedures for a victim to participate in the program in accordance with Sections 7 and 10(13) of this administrative regulation.

Section 9. Assessment and Admission Procedures. (1) (a) If a batterer is determined to be eligible for a batterer intervention program based on eligibility criteria established in Section 8(1)(a) of this administrative regulation, the provider shall perform an assessment of the batterer.
(b) An assessment of the offender's treatment needs shall be performed if an offender is determined to be eligible for domestic violence treatment based on the eligibility criteria established in accordance with Section 8(1)(e) of this administrative regulation.

Assessment conducted in accordance with paragraph (a) of this subsection shall include consideration of the batterer's [offender's]:
1. History of abusive behavior including degree of harm and type of violent conduct;
2. Criminal history;
3. Risk of harm to self and others;
4. Medical history;
5. History of a mental [emotional] disorder;
6. Current mental status;
7. History of (a) presence of a mental illness, and (b) a substance abuse disorder;
8. Characteristics and (a) ability to benefit from the approved program curriculum; and
9. (a) Relevant public records, including a police report and other information about the batterer/offender.

(2) If requirements of Section 7 of this administrative regulation are met, a provider may interview a victim and (a) consider information provided by a victim in the assessment, if an offender consents for a victim to participate in an assessment.
(3) If based on the assessment required by subsection (1) of this section, the provider determines that the batterer is unlikely to benefit from the program, the provider shall refer the batterer to a service which is more likely to benefit the batterer in the provider’s professional opinion. A provider shall use the professional opinion, if any, to determine whether the batterer is more likely to benefit from the program.

(4) A provider may require a batterer to participate in mental health or substance abuse treatment as a prerequisite for admission to or completion of the domestic violence program.

(5) A provider shall notify the referring court whether the batterer is admitted to the program or referred to another program or service.

(6) A provider shall not file a petition under Section (3) of this section until a provider determines that the perpetrator is unlikely to benefit from the program.

Section 10. (Treatment) Procedures. (1) A provider shall make individual and group intervention services available to a client at least once weekly.

(2) If a provider offers a group intervention program, the program shall segment male and female battered into separate groups.

(3) A group intervention session shall include:

(a) Between two and twelve (12) clients, unless two (2) providers are present; and
(b) No more than fifteen (15) clients if two (2) providers are present.

(4) A group intervention session shall require a client to attend for at least ninety (90) minutes or longer.

(5) A client shall participate in the program for at least twenty-eight (28) weeks.

(6) A person referred by a court may participate in a group intervention session if the court requires attendance.

(7) A provider shall establish and follow a core curriculum for group participation that includes:

(a) The definition of domestic violence, including physical, sexual, psychological, and emotional abuse;
(b) Exploration of the effect of domestic violence on a victim and a witness to domestic violence;
(c) Discussion of civil and criminal law related to domestic violence;
(d) Description of the cycle of violence and other dynamics of domestic violence;
(e) Instruction of personal responsibility for domestic violence;
(f) Instruction on the use of power, control, and coercion in an intimate relationship;
(g) Confrontation of rigid, sex role stereotyping;
(h) Challenge of a client’s pattern of aggression in a conflict with a victim;
(i) Exploration of the actual and perceived role of alcohol and drug abuse in the domestic violence;
(j) Exploration of a constructive and nonviolent method for expressing anger and resolving conflict in a relationship, including:

1. A period of time-out;
2. Stress management;
3. Anger-resolution, and
4. Constructive verbalization;
(k) Parenting after violence, including education on shaken baby syndrome;
(l) Development of a relapse prevention technique; and
(m) Promotion of aftercare, if indicated.

(8) At the discretion of the provider, a provider may offer individual intervention to a client if the client would:
(a) Not benefit from a group intervention; or
(b) Be disruptive to a group setting.

(9) If a client participates in individual intervention, the provider shall:
(a) Curriculum content of the individual intervention shall contain the core curriculum in accordance with subsection (7) of this section.
(b) The client shall complete a minimum of fourteen (14), one (1) hour intervention sessions.
(10) (a) If a group intervention program is provided to a female client, the core curriculum required by subsection (7) of this section shall:
1. Amended as specified in subsection (11) of this section.
2. Include:
(a) The definition and forms of domestic violence, including physical, sexual, psychological, and environmental abuse;
b) Exploration of the effect of violence on victim and witness to domestic violence;
c) Discussion of civil and criminal law related to domestic violence;
d) Instruction about personal responsibility for violence;
e) Confrontation of the client’s use of power, control, and coercion in an intimate relationship;
f) Challenge of the client’s pattern of aggression in a conflict with a victim;
g) Exploration of the actual and perceived role of alcohol and drug abuse in domestic violence;
h) Exploration of a constructive and nonviolent method for resolving conflict in a relationship;
i) Exploration of life experiences and belief systems that have fostered choices for violence behavior;
j) Parenting after violence, including education on shaken baby syndrome;
k) Safety planning and knowledge of domestic violence resources; and
l) Development of an aftercare plan.
(b) A provider shall document factors, other than the referral source, which make a female client eligible for a program.
(11) (a) The department may approve or disapprove an amendment to a provider’s core curriculum if the provider submits to the department:
1. (x) [Implemented in a manner that relates to the gender specific issues.]
(b) A provider may amend a core curriculum with the prior written approval of the department.
(c) A written request for approval of a specific amendment to a core curriculum;
2. [b] An explanation of the purpose of the amendment; and
3. [e] The proposed amended core curriculum.
(b) (10) The department shall notify the provider in writing if an amended curriculum is approved or disapproved no later than thirty (30) days after the date that the department receives the request.
(c) The notice provided in accordance with paragraph (b) of this subsection shall:
1. [e] Specify the effective date of the approval, if granted,
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2[b] Specify which of the requirements of subsection (7) or (10)[(8)] of this section that the amended curriculm does not meet, if it is disapproved; and

3[e] Acknowledge the right to dispute a disapproval in accordance with Sections 13 and 14 of this administrative regulation.

12 If a client of a program makes a threat towards a victim,[44] a provider shall comply with the warning requirements of KRS 202A.400 [if an intended victim has been threatened by a client of the program].

13 If a client is discharged from a program,[42] a provider shall notify the victim in accordance with Section 7 of this administrative regulation if a client who has signed an authorization to disclose information to a victim in accordance with Section 6(2)[(3)] of this administrative regulation is discharged from the program.

14 A provider shall document each effort to notify a victim.

14 A provider shall not offer or provide marital counseling or family therapy to a client or a victim;

(a) Unless the client:

16[a] Has successfully completed the program; and

16[b] Has not demonstrated violence in his relationship with a victim for at least six (6) months; and

16[c] Has shown evidence of successful completion of the program.

15 A provider shall not offer or provide marital counseling or family therapy to a client or victim if:

18[e] There is a foreseeable risk of harm to the victim which may result from the marital services; or

18[b] The provider believes that the victim may agree to participate because of coercion or threat from the client.

Section 11. Involuntary Discharge from a Program. (1) A provider shall involuntarily discharge a client who:

(a) Fails to attend more than three (3)[ten (10)] percent of scheduled appointments;

(b) Fails to actively participate in services or to complete assignments;

(c) Violates a provision of a court order; or

(d) After admission to the program, perpetrates domestic violence or other behavior which, in the provider’s professional judgment, is associated with increased risk of harm to the victim.

(2) A provider may involuntarily discharge a client who fails to pay for assessment or treatment services;

(a) As agreed; or

(b) As ordered by a court.

(3)[a] A provider shall notify the referring court in writing upon the provider’s determination that a client shall be discharged in accordance with subsection (1) or (2) of this section.

(b) The notice provided in accordance with paragraph (a) of this subsection shall:

1[b] Specify the reason for the discharge;

2[a] Be made no later than five (5) days after the determination; or

3[e] Be made[e]; No later than seventy-two[thirty -four (4)] hours if the determination is made in accordance with subsection (1)[(2)] of this section.

4 If the discharge is pursuant to subsection (1)[(2)] of this section, a provider shall;

(a) Immediately notify the victim in accordance with Section 10[13][142] of this administrative regulation; and

(b) [if the discharge is pursuant to subsection (1)[(2)] of this section.]

5 The provider shall] Document each effort to notify the victim.

A provider may transfer a batterer to another certified provider, if:

(a) The batterer requests;

(b) The reason for the batterer’s request is verifiable; or

(c) The batterer is in good standing in the sending program;

(d) The receiving provider accepts the batterer into the receiving program; and

(e) Communication between the sending and receiving provider is documented and includes a mutually agreed upon intervention plan for the batterer.

Victim notification shall be made pursuant to Section 7 of this administrative regulation.

Section 12. Monitoring (1) Unless the cabinet determines that an investigation would endanger a client or a domestic violence victim, the cabinet shall investigate a signed written or verbal complaint which alleges that a provider has failed to adhere to the requirements in Section 2 through 11 of this administrative regulation; or

(b) Provider’s practice may endanger a client or victim.

2[The cabinet] shall investigate a signed written complaint which alleges that a provider has failed to adhere to the requirements in Sections 2 through 11 of this administrative regulation or whose practice may endanger a client or domestic violence victim unless the cabinet determines that an investigation would endanger a client or domestic violence victim.

2 The cabinet may investigate a verbal complaint which alleges that a provider has failed to adhere to the requirements in Sections 2 through 11 of this administrative regulation or whose practice may endanger a client or domestic violence victim.

(3) The cabinet may conduct periodic provider reviews to:

(a) Determine if a provider is in compliance with the requirements established in the requirements in Sections 2 through 11 of this administrative regulation; and

(b) Evaluate overall quality of services provided.

4[4] A provider’s[provider] review or an investigation of a provider shall consist of one (1) or more of the following:

(a) An interview with a certified provider or other employee of the agency;

(b) A review of administrative records;

(c) A review of client records;

(d) Off-site monitoring by cabinet staff using data submitted [quarterly] in accordance with Section 6(10) of this administrative regulation;

(e) Observation of an assessment or intervention, treatment service, unless a batterer[an offender] objects to being observed;

(f) Interviews with one (1) or more of the following:

1 A batterer[an offender] who consents to an interview;

2 A victim who consents to an interview;

3 A judge or other personnel of the referring court or agency;

4 A probation or parole officer;

5 A case worker for the cabinet [for families and children]; or

6 Personnel from any other agency who;

[that] May make a referral for court-ordered domestic violence intervention[offender treatment] services;

b, [or who] Interacts with a provider; or

c, [who] Has knowledge about the provider’s practice;

(g) Physical inspection of a provider’s facility[facilities]; or

(h) The review of other materials necessary to determine compliance with Sections 2 through 11 of this administrative regulation and KRS 403.7505.

(5) The cabinet shall refer an allegation with any indication that includes information which indicates that a provider may have violated a provider’s professional licensure or certification board to a board which has jurisdiction to regulate the provider.

(5) Based on the information obtained in accordance with subsection (1), (2), or (3) of this section[46] the cabinet may determine that a program,

(a) Does or does not meet the requirements of Sections 2 through 11 of this administrative regulation; and

(b) [that a program is] endangering a client or a domestic violence victim [based on the information obtained in accordance with subsection (1), (2), or (3) of this section];

(6) If the cabinet determines that a certified provider has failed to meet the requirements of Sections 2 through 11 of this administrative regulation or is endangering a client or a domestic violence victim, the cabinet shall notify the provider in writing of its determination.

(b) Based upon findings of an investigation or provider review, the cabinet may:

1[a] Require the provider to submit a corrective action plan;

2[b] Impose a corrective action plan upon the provider; or

3[e] Remove the provider’s certification in accordance with Section 3(3) or (4) of this administrative regulation.

(7) If the cabinet determines that the associate provider has failed to meet a requirement specified in Section 5(4)(b) of the
administrative regulation, the:
(a) if the Cabinet shall notify an autonomous provider who supervises an associate provider; and
(b) if it determines that the associate provider has failed to meet a requirement specified in Section 6(4)(b) of the administrative regulation. The autonomous provider shall be responsible to assure that corrective action is taken.

Section 13. Informal Resolution of Disputes Prior to Hearing. (1) An applicant or provider may request an informal resolution meeting if the applicant or provider wishes to appeal:
(a) The denial of an application;
(b) The revocation of certification;
(c) A determination made in accordance with Section 13(6)(a) of this administrative regulation; or
(d) A determination, which is specified in a notice, provided in accordance with Section 10(1)(a)(9) of this administrative regulation.

(2) A request for an informal resolution meeting shall:
(a) Identify the disputed determination or action;
(b) State the basis on which the department's action is believed to be unwarranted or erroneous;
(c) Summarize the appellant's position;
(d) Provide the name, address, and telephone number of each individual who is expected to attend the informal resolution meeting on the appellant's behalf, if a meeting is held; and
(e) Include documentary evidence that the appellant wishes the department to consider in relation to the dispute.

(3) A request for an informal resolution meeting shall not be considered a request for an administrative hearing.

(4) The department shall, within thirty (30) days of receipt of a request made in accordance with subsection (1) of this section, notify the appellant in writing of the following:
(a) The time and place at which the informal resolution meeting shall be held;
(b) The name and title of the department's representative who is expected to attend the meeting;
(c) The provisions of subsections (3) and (9) of this section; and
(d) The provisions of Section 14(1) of this administrative regulation.

(5) The informal resolution meeting shall be scheduled for a date no later than sixty (60) days after receipt of a request submitted in accordance with subsection (1) of this section.

(6) Prior to an informal resolution meeting, the department may rescind the disputed action or determination based on the contents of the request.

(7) The department shall [may] cancel an informal resolution meeting if:
(a) It rescinds the disputed action or determination in accordance with subsection (6) of this section;
(b) It informs the appellant of the decision to rescind the disputed action or determination at least three (3) business days prior to the scheduled date of the meeting; and
(c) The appellant agrees to cancellation of the meeting.

(8) The department shall document the actions taken in accordance with subsection (7) of this section.

(9) If an informal resolution meeting is held, the department shall notify the appellant in writing no later than thirty (30) days after the meeting if it shall rescind, modify, or enforces the disputed action, and the facts upon which its decision is based.

(10) An appellant may request an administrative hearing in accordance with Section 14(1) of this administrative regulation at any time during the informal resolution process established in this section.

Section 14. Administrative Hearing Process. (1) A completed DVPR-002, "Service Appeal Form Request," is an administrative hearing shall be received by the department no later than thirty (30) calendar days after the date of notice of a determination or a resolution decision, whichever is later. The request shall be sent to the Batter Intervention Program Administrator, Department for Community Based Services, Division of Violence Prevention Resources, 275 East Main Street [Sexual and Domestic Violence Program-Administrator, Department for Mental Health and Mental Retardation Services, Cabinet for Health and Family Services, 100 Fair Oaks Lane, 4th Floor], Frankfort, Kentucky 40621.

(2) An administrative hearing shall be conducted by a hearing officer who is knowledgeable of cabinet policy. The secretary of the cabinet, in accordance with KRS 138.050, shall appoint the hearing officer.

(3) The department shall forward to the hearing officer an administrative record, which shall include:
(a) A copy of the notice of action taken;
(b) A copy of the request for an informal resolution meeting, if applicable;
(c) The documentation required by Section 13(6) of this administrative regulation if applicable;
(d) A copy of the notice provided by the department in accordance with Section 13(9) of this administrative regulation; and
(e) Documentary evidence provided by the appellant to the department.

(4) The hearing officer shall provide notice of a hearing in accordance with KRS 138.050.

(5) A prehearing conference may be held at least seven (7) calendar days in advance of the hearing date. Conduct of the prehearing conference shall comply with KRS 138.070. Each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned, if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled. A hearing request shall be withdrawn only under the following circumstances:
(a) The hearing officer receives a written statement from the appellant stating that the request is withdrawn;
(b) The appellant states on the record at the hearing that the request is withdrawn.

(7) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 138.060.

(8) The hearing officer shall conduct the hearing in accordance with KRS 138.080.

(9) The hearing officer shall consider the facts as presented at the hearing, including supplementary material, if requested, and prepare a recommendation in accordance with KRS 138.110.

(10) The hearing officer's recommendation shall be submitted to the secretary of the cabinet and to the department. The department and the appellant shall have fifteen (15) calendar days within which to file with the secretary exceptions to the hearing officer's recommendation in accordance with KRS 138.110(4). The secretary shall make the final decision of the cabinet pursuant to KRS 138.120, supported by findings of fact and conclusions of law.

(11) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(12) The department shall maintain an official record of the hearing in compliance with KRS 13B.130.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DVPR-001, Application for Batterer Intervention Program Certification," edition September 2008;
(b) "DVPR-002, Service Appeal Form Request," edition September 2008. [Application for Certification as a Batterer Intervention Program-Administrator, Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621.]

PATRICIA WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall, if requested, be held on December 22, 2008, at 9 a.m. in the Administrative Hearings Branch Conference Room, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 2008. You may submit written comments regarding this proposed administrative regulation until close of business December 31, 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-8, Frankfort, Kentucky 40601, phone (502) 584-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:
(a) The administrative regulation does: This administrative regulation establishes the certification standards for mental health professionals for the provision of court ordered batterers intervention programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 403.7505 which requires that the Cabinet for Health and Family Services promulgate administrative regulations establishing certification standards for mental health professionals providing intervention services for batterers.

(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 establishing provider certification requirements, certification procedures, and standards for services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists or will assist in the effective administration of the statute by clarifying the responsibilities of the provider which will enhance uniform monitoring.

(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 provide for the following changes: Updates language to reflect more current professional terminology and organizational changes within the Cabinet; Improves the recruitment and retention of providers by reducing continuing education required for recertification from sixteen (16) to twelve (12) hours every two (2) years, creating reciprocity to providers certified in another state, adding certified alcohol and drug counselors to the list of qualifying certificates or licenses required to practice as a provider, decreasing the length of professional experience needed from four (4) to two (2) years, and relaxing requirements for associate providers to become autonomous providers; Clarifies clinical supervision requirements of an associate provider by an autonomous provider, intervention services for female batterers, individual and group intervention services, program curriculum, safeguards and practice concerning victim contact, guidelines for transfer of a batterer from one program to another, provision of marital counseling to a batterer or victim, batterer discharge criteria, and court and victim notification requirements of providers; Adds parenting after violence education to the provider’s program curriculum; Extends the minimum length of the intervention program from twenty to twenty-eight weeks; and Makes technical corrections and updates material incorporated.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assist with the recruitment and retention of qualified domestic violence batterer intervention providers and to align Kentucky’s standards for batterer intervention with other States and nationally recognized practice.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by clarifying qualifications of providers and standards of batterer intervention.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its enhancement of batterer intervention provider requirements and related practice standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation current or proposed: 100 Mental Health Professionals certified as batterer intervention providers, 14 Regional Mental Health and Mental Retardation Boards, and approximately 50 independent agencies.

(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: Batterer intervention providers will have to extend intervention programs from twenty (20) to twenty-eight (28) weeks, which makes Kentucky’s program standards more comparable with other States. Additional requirements and safeguards have been added to provider programs concerning their curriculum, victim contact, a batterer’s transfer from one program to another, and batterer discharge. These requirements and safeguards are aligned with national practice standards. This amendment reduces some batterer intervention provider certification standards to support the recruitment and retention of qualified providers. Specifically, the amendment relaxes continuing education requirements, reduces barriers for an associate provider to become an autonomous provider, and allows reciprocity to providers certified in another state. Prior to the amendment’s filing, batterer intervention providers and their representatives were consulted regarding these changes, and comments received were generally positive or resulted in minor revision to the proposed 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 may impose new, initial programmatic costs to providers, but based on discussion and consultation with providers, these new costs should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current and prospective batterer intervention providers will benefit by the amendment’s: Alignment of provider standards and terminology with other States and nationally recognized best practices; Greater specificity regarding clinical supervision requirements of an associate provider by an autonomous provider, intervention services for female batterers, individual and group intervention services, program curriculum, safeguards and practice concerning victim contact, guidelines for transfer of a batterer from one program to another, provision of marital counseling to a batterer or victim, batterer discharge criteria, and court and victim notification requirements of providers; and Efforts to improve the recruitment and retention of providers by reducing continuing education required for recertification from sixteen (16) to twelve (12) hours every two (2) years, creating reciprocity to providers certified in another state, adding certified alcohol and drug counselors to the list of qualifying certificates or licenses required to practice as a provider, decreasing the length of professional experience needed from four (4) to two (2) years, and relaxing requirements for associate providers to become autonomous providers.

(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.
(6) 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.

(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 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.

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 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 403.7505

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 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 (+/-):
Other Explanation

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Income Support
Child Support Enforcement

(Amendment)


STATUTORY AUTHORITY: KRS 1944A.050(1), 405.520, 42 U.S.C. 654(28)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 405.520 authorizes the cabinet to promulgate administrative regulations to implement the Child Support Recovery Program. KRS 1948.060 requires the cabinet to promulgate administrative regulations to protect the confidential nature of cabinet records. This administrative regulation establishes the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Safeguarding Information. (1) Use or disclosure of information obtained exclusively for the Child Support Enforcement Program (CSEP) shall be restricted pursuant to KRS 1948.050, 205.175, 205.730, 205.735, 205.785(2), 205.772(4), 205.776, 45 C.F.R. 303.70(d)(2), 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(28).

(2) Unless an applicant for or recipient of child support services has given informed consent, information concerning the applicant or recipient of child support services shall only be released in accordance with KRS 205.177.

Section 2. Program Administration Contract. (1) A program administration contract initiated by the cabinet with another government entity shall comply with KRS Chapter 45A and shall:

(a) Contain a clear description of specific duties, functions and responsibilities of the parties in administration of the CSEP;

(b) Specify clear and definite terms and requirements of the contract;

(c) Specify financial reimbursement arrangements including:
   1. Budget estimates;
   2. Covered expenditures;
   3. Methods of determining costs; and
   4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain reporting requirements;

(f) Contain the requirements for compliance with 21 U.S.C. 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the contract.

(3) The contracted government entity shall provide to the cabinet in a timely fashion statistical information concerning CSEP activities as prescribed by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to a local law enforcement official in accordance with the official's statutory obligations, but the official shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 3. An Agreement with a Financial Institution. The cabinet shall enter into an agreement with a financial institution pursuant to KRS 205.712(4), 205.772 and 205.774 to conduct a financial data match.

(1) The cabinet or its agent shall implement the data exchange.

The cabinet or its agent shall:

(a) Have access to identifying information for an obligated parent who owes an arrearage and who has been identified to a financial institution through a data match for the purpose of monitoring and auditing.

(b) Have access to identifying information available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

(2) The cabinet shall pay a financial institution a fee not to exceed $250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

(3) A financial institution shall:

(a) Exchange information by way of an automated data exchange system;

(b) Maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall...
1. Be maintained and safeguarded as confidential; and
2. Not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and
(c) incur no liability for:
1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder;
2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial institution in good faith; or
3. Providing a file to the cabinet or its authorized agent in accordance with an approved format as described by the Financial Institution Data Match Specifications Handbook incorporated by reference in Section 4 of this administrative regulation.
(4) If a financial data match occurs, a financial institution shall:
(a) Hold, encumber or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver;
(b) Address and send to the cabinet or its authorized agent as designated, notices, paperwork, tapes or other communication resulting from a financial institution data match program; and
(c) Submit data files to the cabinet or its authorized agent as designated.
(5) The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy and no account shall be held, encumbered, or surrendered to the cabinet without a financial institution having received an order to withhold or order to deliver from the cabinet.
(6) The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format prescribed by the Financial Institution Data Match Specifications Handbook, incorporated by reference in Section 4 of this administrative regulation, using either Method One or Method Two.
(a) If a financial institution agrees to provide the information according to Method One, the financial institution shall:
1. Submit by March 31, June 30, September 30, and December 31 of a calendar year, data files of open accounts to the cabinet, or the cabinet's authorized agent, for the data match; and
2. Report information required by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.
(b) If a financial institution agrees to provide the information according to Method Two, the financial institution shall:
1. Request the cabinet to send the inquiry file to the financial institution's agent;
2. Match the inquiry file of obligors identified and provided by the cabinet, or by the cabinet's authorized agent, against open accounts maintained by a financial institution; and
3. Submit a report of matched accounts to the cabinet or its authorized agent within thirty (30) days of receipt of the inquiry file.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Community Based Service, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008 at 9 a.m. in the Administrative Hearings Branch Conference Rooms, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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 31, 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: Shari Sullivan, CSE Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures for safeguarding cabinet records and entering into program administration contracts and cooperative agreements.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for safeguarding cabinet records and entering into program administration contracts and cooperative agreements.
(c) How this administrative regulation conforms to the content of the authorizing statute: The Cabinet has responsibility under KRS 1944A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 654 to safeguard cabinet records and enter into program administration contracts and cooperative agreements. This administrative regulation sets forth such procedures and processes.
(d) How this administrative regulation currently assists or will assist the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the Cabinet to safeguard confidential records and enter into program administration contracts and cooperative agreements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment will change the agency name from Division of Child Support to Child Support Enforcement. The following incorporated handbook is updated with the current version of the "Financial Institution Data Match Specifications Handbook".
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate changes to and to update the Financial Institution Data Match Specifications Handbook.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet to safeguard cabinet records and enter into program administration contracts and cooperative agreements.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through the update to the Financial Institution Data Match Specifications Handbook incorporated by reference in this regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the Financial Institution Data Match Specifications Handbook incorporated by reference in this regulation will affect the Child Support Enforcement Program and those financial institutions that hold accounts for non-custodial parents who are delinquent in their child support payments.
(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 incorporated materials have been
updated with the current version of the Financial Institution Data Match Specifications Handbook.

(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 associated with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Financial institutions will have access to the most recent information related to the requirements for formatting and reporting account data.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis. There are no fees and no increase in funding on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if the new, or by the change it is an amendment: There are no fees and no increase in funding for this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Income Support, Child Support Enforcement is impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 405.520, 42 U.S.C. 654(26)

4. Estimate the effect of this administrative regulation on the expenses 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? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not generate any additional revenue in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not generate any additional revenue 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 Income Support
Child Support Enforcement
(Amendment)


STATUTORY AUTHORITY: KRS 194A.050(1), 405.520

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. KRS 205.795 authorizes the secretary to promulgate administrative regulations consistent with the purpose and intent of KRS 205.710 to 205.800. This administrative regulation establishes the requirements for the establishment of paternity for the Child Support Enforcement Program.

Section 1. Requirement for Paternity Establishment. The cabinet shall bring action, as specified in KRS 406.021(1) and (3) if (1) The child is born out of wedlock; and (2) An assignment of rights to the cabinet is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet Action. (1) A case requiring paternity action shall be opened upon receipt of:

(a) A public assistance case referral; or

(b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The cabinet shall open a case pending determination of good cause.

(a) If good cause for failure to cooperate is determined, the child support case shall be closed.

(b) Good cause shall be established in accordance with the requirements of 321 KAR 2:008, Section 17(4) and (5).

(c) The cabinet in which paternity has not yet been established, the cabinet shall, within ninety (90) days of locating the alleged father or custodial parent:

(a) Obtain a voluntary acknowledgment of paternity as specified by KRS 213.036(5) and 213.048(3), (9);

(b) File for establishment of paternity;

(c) Complete service of process to establish paternity; or

(d) Document unsuccessful attempts to serve process.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months.

(5) The voluntary acknowledgment of paternity may be rescinded in accordance with 901 KAH 5.070(6).

(6) The cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father pursuant to KRS 205.712(2)(h), utilizing the CS-77, Administrative Order for Genetic Testing.

(7) The cabinet shall request denial, suspension or revocation of a license or certification for failure to comply with a subpoena or warrant relating to paternity pursuant to KRS 186.570(2) and 237.110(5).

VOLUME 35, NUMBER 6 – DECEMBER 1, 2008

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Sankel Lane, Frankfort, Kentucky 40601, Community-Based Services, 576 East Main Street, Frankfort, Kentucky 40624, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008 at 9 a.m. in the Administrative Hearing Room, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notice of intent to attend is given, 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 31, 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-8, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shari Sullivan, CSE Regulation Coordinator
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes paternity of a child born out of wedlock.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment of paternity.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-659 to establish paternity. This administrative regulation sets forth such procedures and processes for implementing the law.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the Cabinet to establish paternity.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will change the agency name from Division of Child Support to Child Support Enforcement. The incorporated form, "CS-77, Administrative Order for Genetic Testing" was updated to reflect the new agency name due to the reorganization of the agency structure.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update the state form used in accordance with KRS Chapter 405 and 407.
(c) How the amendment conforms to the content of the authorizing statutes. The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing paternity of a child born out of wedlock.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through its updates to the state form incorporated by reference in this regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the state form incorporated by reference in this regulation will affect the Child Support Enforcement Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The incorporated materials have been updated to reflect the program name change.
(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 fees and no increase in funding for this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? There is no benefit for the entities involved in the administrative regulation. Continuance of child support enforcement services at no additional cost.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no fees and no increase in funding for this administrative regulation.
(b) On a continuing basis: There are no fees and no increase in funding on a continuing basis for the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if the new, or by the change if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What parts, units 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 Income Support, Child Support Enforcement is impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 405.520
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in subsequent years.

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(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.

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 Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.


STATUTORY AUTHORITY: KRS 194A 050(1), 205.795, 405.500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) requires the secretary of the cabinet 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. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation shall be Established (1) A child support and medical support obligation shall be established by:
(a) A court of competent jurisdiction; or
(b) An administrative order.

(2) The obligation shall be the amount:
(a) Specified in Section 2(4) of this administrative regulation; or
(b) Administratively established by the cabinet in accordance with the child support guidelines contained in KRS 403.212, as computed on form:
   1. CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation;
   2. CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statute and legal process in establishing the amount of a child support and medical support obligation, including KRS 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(g), shall be calculated by using:
(a) That parent's portion of the total support obligation as indicated on the worksheet, if:
   1. There is a support order; or
   2. A copy of the child support obligation worksheet is obtained; or
(b) One-hundred (100) percent of the income of the parent with whom the prior-born child resides, if:
   1. There is no support order; or

2. There is a support order, but no support obligation worksheet, or
3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:
(a) Complete service of process; or
(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:
(a) Establish paternity;
(b) Establish a child support or medical support obligation; or
(c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:
(a) Paternity is not in question;
(b) There is no existing order of support for the child;
(c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
(d) The noncustodial parent's, or obligor's, address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212, or subsection (4) of this section.

(3) To gather necessary information for administrative establishment, the cabinet shall:
(a) Send to the custodial parent, forms:
   1. CS-133, Custodial Parent Information Request;
   2. CS-65, Statement of Income and Resources;
   3. CS-132, Child Care Expense Verification, and
   4. CS-136, Health Insurance Information Request.
(b) Send to the nonparental custodian, or obligor, forms:
   1. CS-131, Nonparental Custodian Information Request;
   2. CS-132; and
   3. CS-136, if appropriate;
(c) Send to the noncustodial parent, or obligor, forms:
   1. CS-64, Noncustodial Parent Appointment Letter;
   2. CS-65,
   3. CS-132; and
   4. CS-138;
(d) Send a CS-130, Wage Information Request to the employer of the:
   1. Custodial parent; or
   2. Noncustodial parent, or obligor;
(e) Issue a CS-84 Administrative subpoena, if appropriate:
   1. In accordance with KRS 205.712(2)(k) and (n); or
   2. On a custodial parent;
   3. On a nonparental custodian;
   4. On a noncustodial parent, or obligor; or
   5. On an employer; and:
(a) A utility and cable company;
(b) A financial institution;
(c) A custodial parent;
(d) A nonparental custodian;
(e) A noncustodial parent, or obligor; or
(f) An employer; and
(g) Prior to initiating a request for information from a consumer credit reporting agency, send an obligor a CS-93, Advance Notice of Intent to Request Full Credit Report in accordance with KRS 205.7685.

(4) In a default case, the cabinet shall set the obligation based on the Kentucky Transitorial Assistance Program (K-TAP) standard of need for a child as specified in 921 KAR 2:016, Section 9.

(5) After the monthly support obligation is determined, the cabinet shall:
(a) Serve a CS-66, Administrative Order/Notice of Monthly Support Obligation and a CS-80, Rights and Responsibilities of Noncustodial Parents, upon the noncustodial parent, or obligor, in accordance with the requirements of KRS 405.440,
(b) Provide the legal representative of the noncustodial parent, or obligor, with a copy of the notice within fourteen (14) calendar days of the noncustodial parent's, or obligor's, refusal or acceptance of the notice; and

(c) Send a copy to the custodial parent, concurrent with issuing the CS-66 to the noncustodial parent or obligor.

(6) In accordance with KRS 405.430(6), a cabinet may modify the monthly support obligation established by the cabinet.

(7) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (8) of this section.

(8) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

(a) Administratively upon notice to the obligor or obligee; or

(b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet shall notify each party subject to a child support order of the right to request a review of the order every thirty-six (36) months.

(2) In accordance with 45 C.F.R. 303.8(6), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) 1. Modify the order, if appropriate, and legal representatives.

2. Request modification of the order; or

3. Determine the circumstances do not meet criteria for modification, in accordance with KRS 403.213, and issue a CS-79, Notification of Review Determination, as specified in paragraph (c) of this subsection; and

(c) Provide notification within fourteen (14) calendar days to each party involved in the CS-66, if appropriate, and legal representatives.

(3) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review and, in accordance with subsection (4) of this section, modify a child support order:

(a) Upon the request of:

1. Either parent or

2. Another party with standing to request a modification; and

(b) Every thirty-six (36) months in a K-TAP case in which the address of each parent or custodian is known.

(4) If a child support case meets the criteria of KRS 403.213, the cabinet shall:

(a) Modify an administratively established order; or

(b) Request a court of competent jurisdiction to modify a judicially-established order.

(5) In accordance with subsections (3) and (4) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child.

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

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

(a) "CS-64, Noncustodial Parent Appointment Letter", edition 3/03/04/06;

(b) "CS-65, Statement of Income and Resources", edition 3/03/04/06;

(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", edition 3/03/04/06;

(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 3/03/04/06;

(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 3/03/04/06;

(f) "CS-79, Notification of Review Determination", edition 3/03/04/06;

(g) "CS-80, Rights and Responsibilities of Noncustodial Parents", edition 3/03/04/06;

(h) "CS-84, Administrative Subpoena", edition 3/03/04/06;

(i) "CS-93, Advance Notice of Intent to Request Full Credit Report", edition 3/03/04/06;

(j) "CS-130, Wage Information Request", edition 3/03/04/06;

(k) "CS-131, Nonparental Custodial Information Request", edition 3/03/04/06;

(l) "CS-132, Child Care Expense Verification", edition 3/03/04/06;

(m) "CS-133, Custodial Parent Information Request", edition 3/03/04/06; and

(n) "CS-136, Health Insurance Information Request", edition 3/03/04/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 739 Schenkel Lane, Frankfort, Kentucky 40601 [Community Based Services, 275 East Main Street, Frankfort, Kentucky 40601], Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN VENO, Deputy Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 14, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 9 a.m. in the Administrative Hearings Branch Conference Room, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 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 the proposed administrative regulation. You may submit written comments regarding the proposed administrative regulation until close of business December 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jai 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: Shari Sullivan, CSE Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review, and modification of child support and medical support orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 406.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669 to establish, review, and modify support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the Cabinet to establish, review, and modify child support and medical support orders.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the agency name from Division of Child Support to Child Support Enforcement because of the reorganization of the agency structure. The "CS-64, Noncustodial Parent Appointment Letter", was amended to correct a page number, add a court order, and update with the new program name. The "CS-132, Child Care Expense Verification", was amended to add the Child Care Provider Introduction and update

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update state forms used in accordance with KRS Chapter 405 and 407.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing, reviewing, and modifying child support and medical support orders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through its updates to state forms incorporated by reference in this regulation.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the state forms incorporated by reference in this regulation will affect the Child Support Enforcement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The incorporated materials have been updated to reflect the program name change.

(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 fees and no increase in funding for this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit for the entities involved. Continuance of child support enforcement services at no additional cost.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding for this administrative regulation.

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(i) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if the new, or by the change if it is an amendment. There are no fees and no increase in funding for this administrative regulation.

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

(k) TIERING: Is tiering applied? Tension is not applied, as this administrative regulation will be applied in a like manner on a statewide basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Income Support, Child Support Enforcement is impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.795, 405.520

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first full year? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in subsequent years.

(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.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, November 14, 2008

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(New Administrative Regulation)

201 KAR 5:120. Practice of optometry outside of regular office for a charitable purpose.

RELATES TO KRS 320.220;320.240(4), (7), 320.310(1)(f)
STATUTORY AUTHORITY: KRS 320.240(4), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.220 authorizes the board to regulate and control the practice of optometry in the public interest. KRS 320.240(4) and (7) requires the board to promulgate administrative regulations to reasonably regulate the profession of optometry. This administrative regulation addresses the practice of optometry outside of an optometrist's regular office for a charitable purpose in a manner that will not lead to discipline under KRS 320.310(1)(f)

Section 1. Definitions. (1) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.

(2) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.

Section 2. A Kentucky licensed optometrist may offer optometric services outside the optometrist's regular office for a charitable purpose without violating KRS 320.310(1)(f) if the following conditions are met:

(1)(a) The charitable organization shall submit a written request to include the services of Kentucky licensed optometrists at least ninety (90) days before the optometric services are to be offered; or

(b) The board may waive the ninety (90) day deadline based on exigent circumstances that prevented the charitable organization from complying with the ninety (90) day deadline.

(2) The charitable organization shall submit proof of its nonprofit status;

(3) The charitable organization provides assurance that the participating optometrists shall not be compensated or remunerated in any manner;

(4) The charitable organization denotes the location, date, and time the optometric services will be offered, which shall not exceed seven (7) days;

(5) The charitable organization states the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;

(6) The charitable organization shall require every participating optometrist to develop and maintain a permanent patient record for each individual treated by optometrists;

(7) The charitable organization shall require every participating optometrist to comply with the minimum eye examination requirements of 201 KAR 5:040, Section 7.

DR. DENISE DOBBINS, O.D., President
APPROVED BY AGENCY: November 8, 2008
FILED WITH LRC: November 12, 2008 at 2 p.m.
PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2008 at 4 p.m. at the Board's office, Spindletop Admistration Building Suite 305, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2008, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who would like to make a public 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 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, Spindletop Administrative Building Suite 305, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the criteria for the practice of optometry outside a regular office for a charitable purpose.

(b) The necessity of this administrative regulation: This regulation is necessary to regulate the practice of optometry outside a regular office for a charitable purpose.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations to reasonably regulate the practice of optometry. The regulation states the criteria that protects an optometrist from discipline under KRS 320.310(1)(f).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives criteria for the lawful provision of optometric services outside a regular office for a charitable purpose.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: Comment: No responses are provided since this is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than five (5) requests annually from charitable organizations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The charitable organization will have to provide a written request for inclusion of optometric services by a Kentucky licensed optometrist. The organization will need to submit proof of its nonprofit status, provide assurance the optometrist will not be compensated; indicate the date, time and place of the event; state the nature of the optometric services that will be provided and the class of individuals who are intended to be the recipients of those services; and require participating optometrists to make patient records and comply with minimum eye examination requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The charitable organization will be able to offer optometric services through a Kentucky licensed optometrist.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be required to implement this regulation.

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

(9) TIERING. Is tiering applied? Tiering was not applied as the regulation is applicable to all charitable organizations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Optometric Examiners 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 320.240(4) and (7) authorizes the Board to promulgate administrative regulations to reasonably regulate the practice of optometry.

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-)

Expenditures (+/-)

Other Explanations:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Repealer)

401 KAR 8:61. Repeal of 401 KAR 8:600, 8:150, 8:162, 8:350, 8:400, and 8:420.


STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 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 a number of existing administrative regulations that have been consolidated into other administrative regulations.

Section 1. The following administrative regulations are hereby repealed:

(1) 401 KAR 8:600, Variances and exemptions;
(2) 401 KAR 8:160, Enhanced filtration and disinfection for large systems serving at least 10,000 people;
(3) 401 KAR 8:162, Enhanced filtration and disinfection for small systems serving less than 10,000 people;
(4) 401 KAR 8:350, Corrosivity monitoring;
(5) 401 KAR 8:400, Synthetic organic chemicals; and
(6) 401 KAR 8:420, Volatile organic chemicals.

HENRY 'HANK' LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2008 at 10 a.m. at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing should notify this agency in writing by December 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, KY 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Grzeskzy, Director

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals six administrative regulations in 401 KAR Chapter 8, the provisions of which are being consolidated into other administrative regulations in KAR Chapter 8 through the use of federal citations.

(b) The necessity of this administrative regulation: 401 KAR Chapter 8 is being consolidated in order to take advantage of the use of federal citations rather than to reproduce federal requirements in state regulations. The cabinet believes that this change will make future amendments to 401 KAR Chapter 8 to adopt federal requirements more easily accomplished.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(28), and 224.10-110 authorize the cabinet to promulgate administrative regulations for the purification of water for public and semipublic use. This administrative regulation repeals six existing drinking water regulations in order to incorporate their provisions into other administrative regulations in 401 KAR Chapter 8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The cabinet believes that the repeal of these administrative regulations in order to codify their provisions into other administrative regulations in 401 KAR Chapter 8 through the citation of federal regulatory requirements will assist the cabinet in adopting future federal regulatory changes more easily.

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

(a) How the amendment will change this existing administrative regulation: Not applicable; this is not an amendment to an existing regulation

(b) The necessity of the amendment to this administrative regulation: Not applicable; this is not an amendment to an existing regulation

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable; this is not an amendment to an
existing regulation

(d) How the amendment will assist in the effective administration of the statutes: Not applicable; this is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) The cabinet regulates approximately 491 public and 50 semipublic water systems in Kentucky. Local governments are frequently involved with the ownership or organization of public water systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. This regulation repeals six regulations which are being consolidated into other regulations. This consolidation will present no change in current regulatory requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? This regulation will present no change in costs to the entities listed in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? This regulation repeals six regulations which are being consolidated into other regulations through federal citation. This consolidation will have the benefit of making it clear to the entities identified in question (3) which provisions of 401 KAR Chapter 8 are state requirements and which are federal, and will make clear where the state requirements may be more stringent.

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

Initiatively: This regulation will have no impact on costs to the administrative body.

(a) On a continuing basis: This regulation will have no impact on costs to the administrative body.

(b) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation will have no impact on costs to the administrative body. Funding for the drinking water regulations in 401 KAR Chapter 8 is a mixture of state general funds and federal funds provided for administration of the Safe Drinking Water Act.

(c) Provide an assessment of whether an 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 will not be necessary for the implementation of this regulation. This regulation repeals six regulations which are being consolidated into other regulations through federal citation. This consolidation will have the benefit of making it clear to the entities identified in question (3) which provisions of 401 KAR Chapter 8 are state requirements and which are federal, and will make clear where the state requirements may be more stringent.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. This administrative regulation repeals six administrative regulations in order to consolidate their provisions into six administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts public water systems. Public water systems are often owned by city governments, or organized under the authority of county governments. In some cases a special district may have a water system of its own.

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(28), 224.10-110, and 40 C.F.R. 141 and 142 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 administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? No costs will be incurred from this administrative regulation.

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

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. 40 C.F.R. 141 and 142

2. State compliance standards. KRS 224 10-100(28) and 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 141 contains national primary drinking water regulations promulgated under the Safe Drinking Water Act. 40 C.F.R. 142 contains various implementation requirements for the Environmental Protection Agency and state governments that are seeking or have primary enforcement responsibility for the requirements of these standards. State governments that are seeking primary enforcement responsibility must have state regulations no less stringent than those in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(New Administrative Regulation)


STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1).

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. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care
waiver services is to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI Services" means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.

(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(4) "ABI recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(5) "Acquired brain injury long term care waiver service" means a home and community based waiver service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:
   (a) An injury from a physical trauma;
   (b) Anoxia or a hypoxic episode; or
   (c) Allergic condition, toxic substance, or another acute medical incident.

(6) "ADHC services" means adult day health care services provided on a regularly scheduled basis to maintain an ABI recipient who does not require twenty-four (24) hour care in an institutional setting.

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:
   (a) Completed on a MAP-351; and
   (b) Submitted to the department.

1. For a level of care determination; and
2. No less than twice every twelve (12) months.

(8) "Behavior intervention committee" or "BIC" means a group of professionals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(9) "Classified services" means a nonduplicate combination of ABI waiver services identified in Section 2 of this administrative regulation and consumer directed option services identified in Section 8 of this administrative regulation provided in accordance with the recipient's approved plan of care.

(10) "Board certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board, Inc.

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's plan of care.

(12) "Consumer" is defined by KRS 205.5605(2).

(13) "Consumer directed option" or "CDO" means an option established by KRS 205.5605 within the home and community based services waiver that allows a recipient to:
   (a) Assist with the design of their programs;
   (b) Choose a provider of services; and
   (c) Direct the delivery of services to meet the recipient's needs.

(14) "Covered services and supports" is defined by KRS 205.5605(3).

(15) "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize that risk.

(16) "DCBS" means the Department for Community Based Services.

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

(18) "Family training" means providing to the family or other responsible person:
   (a) Interpretation or explanation of medical examinations and procedures;
   (b) Treatment regimens;
   (c) Use of equipment specified in the plan of care; or
   (d) Advising them how to assist the participant.

(19) "Good cause" means a circumstance beyond the control of an individual which affects the individual's ability to access funding or services, including:
   (a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
   (b) Death or incapacitation of the primary caregiver;
   (c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or
   (d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual's legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.

(20) "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(21) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI recipient's plan of care consisting of:
   (a) The ABI recipient and legal representative if appointed;
   (b) A chosen ABI service provider;
   (c) A case manager;
   (d) Others as designated by the ABI recipient.

(22) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(23) "Licensed practical nurse" or "LPN" means a person who:
   (a) Meets the definition of KRS 314.011(9); and
   (b) Works under the supervision of a registered nurse.

(24) "Licensed professional clinical counselor" or "LPC" is defined by KRS 335.500(3).

(25) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130.

(26) "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.

(27) "Occupational therapist" is defined by KRS 319A.010(3).

(28) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(29) "Physical therapist" is defined by KRS 327.010(2).

(30) "Physical therapist assistant" means a skilled health care worker who:
   (a) Is certified by the Kentucky Board of Physical Therapy; and
   (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(31) "Pro re nata" or "PRN" means as needed.

(32) "Psychologist" is defined by KRS 319.010(9).

(33) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056(3).

(34) "Qualified mental health professional" is defined by KRS 202A.011(12).

(35) "Registered nurse" or "RN" means a person who:
   (a) Meets the definition established in KRS 314.011(9); and
   (b) Has one (1) year or more experience as a professional nurse.

(36) "Representative" is defined by KRS 205.5605(6).

(37) "Speech-language pathologist" is defined by KRS 334A.020(3).

(38) "Support broker" means an individual designated by the department to:
   (a) Provide training, technical assistance, and support to a consumer; and
   (b) Assist a consumer in any other aspects of CDO.

(39) "Transition plan" means a plan that is developed to aid an ABI recipient in exiting from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall be:

(a) Enrolled as a Medicaid provider in accordance with 907 KAR 1:671;
(b) Located within an office in the Commonwealth of Kentucky; and
(c) A licensed provider in accordance with:
   1. 902 KAR 20 066, if an adult day health care provider;
   2. 902 KAR 20:061, if a home health service provider; or
   3. 902 KAR 20 091, if a community mental health center; or
   (d) Certified by the department in accordance with 907 KAR 1:145, Section 3, or 907 KAR 3.090, Section 2, if a provider type is not listed in paragraph (a) of this subsection.
GENERAL RULES

(2) An ABI provider shall comply with:
(a) 907 KAR 1:672; and
(b) 907 KAR 1:673; and
(3) An ABI provider shall have a governing body that shall be:
(a) A legally-constituted entity within the Commonwealth of Kentucky; and
(b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety, and welfare of an ABI recipient served by the agency.
(4) An ABI provider shall:
(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:
1. Child;
2. Parent;
3. Sibling; or
4. Spouse;
(b) Not enroll an ABI recipient for whom the ABI provider cannot meet the service needs; and
(c) Have and follow written criteria in accordance with this administrative regulation for determining the eligibility of an individual for admission to services.
(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 pursuant to 42 U.S.C. 1320d to 1320d-8.
(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's funds:
(a) Separate accounting shall be maintained for each ABI recipient or for the recipient's interest in a common trust or special account;
(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and
(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.
(7) An ABI provider shall have a written statement of its mission and values, and an ABI provider shall have written policies and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction with direct care staff;
(c) Require prompt notification of any unusual incident;
(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;
(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and
(f) Consider the cultural, educational, language, and socioeconomic characteristics of the ABI recipient.
(8) An ABI provider shall ensure the rights of an ABI recipient by:
(a) Making available a description of the rights and the means by which the rights may be exercised, including the right:
1. To time, space, and opportunity for personal privacy;
2. To retain and use personal possessions; and
3. For a residential, personal care, companion, or respite provider to communicate, associate and meet privately with a person of the ABI recipient's choice, including:
   a. The right to send and receive unopened mail; and
   b. The right to private, accessible use of the telephone;
   (b) Maintaining a grievance and appeals system; and
   (c) Complying with the Americans with Disabilities Act pursuant to 28 C.F.R. Part 35.
(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service was provided and all records and reports shall be made available to the:
(a) Department;
(b) ABI recipient's selected case manager;
(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;
(d) General Accounting Office or its designee;
(e) Office of the Auditor of Public Accounts or its designee;
(f) Office of the Attorney General or its designee; and
(g) Centers for Medicare and Medicaid Services.
(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.
(12) An ABI provider shall maintain a record for each ABI recipient served that shall:
(a) Be recorded in permanent ink;
(b) Be free from correction fluid;
(c) Have a strike through for each error which is initialed and dated; and
(d) Contain no blank lines between each entry.
(13) A record of each ABI recipient who is served shall:
(a) Be cumulative;
(b) Be readily available;
(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry;
(d) Contain the following specific information:
1. The ABI recipient's name, Social Security number, and Medical Assistance Identification Number (MAID);
2. An assessment summary relevant to the service area;
3. The plan of care, MAP-109;
4. The crisis prevention and response plan that shall include:
   a. A list containing emergency contact telephone numbers; and
   b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;
5. The transition plan that shall include:
   a. Skills to be developed or maintained from the ABI long term care waiver program;
   b. A listing of the ongoing formal and informal community services available to be accessed, and
   c. A listing of additional resources needed;
6. The training objective for any service which provides skills training to the ABI recipient;
7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;
8. Legally-adequate consent for the provision of services or other treatment including consent for emergency attention which shall be located at each service site;
9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification;
10. Current level of care certification;
   (a) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information;
   (f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and
   (g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.
(14) An ABI provider shall:
(a) Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;
(b) Maintain documentation of annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:
   1. Enselling staff; or
   2. A volunteer, if the volunteer performs direct care of a supervisory function;
   (c) Ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;
   (d) If it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up test-
ing administered by the employee's or volunteer's physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;

(e) Not permit an individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB,

(f) Maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;

(g) Prior to the employee's date of hire or the volunteer's date of service, obtain results of:
   1. A criminal record check from the Administrative Office of the Courts; or
   2. The equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

(h) Obtain the result of a nurse aide abuse registry check as described in 906 KAR 1:100.

(i) Annually, for twenty-five (25) percent of employees randomly selected, obtain:

   1. The results of a criminal record check from the Kentucky Administrative Office of the Courts; or
   2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;

(j) Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a central registry check as described in 922 KAR 1:470;

(k) Evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;

(l) Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient,

(m) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (9) or prior felony conviction;

(n) Not permit an employee or volunteer to transport an ABI recipient, if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(o) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(p) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(q) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; and

(r) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual is listed on the nurse aide abuse registry.

(15) An ABI provider shall:

(a) Have an executive director who:
   1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and
   2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct contact staff who:
   1. Is eighteen (18) years of age or older and has a high school diploma or GED; and
   2. Has a minimum of two (2) years experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(16) An ABI provider shall establish written guidelines which:

(a) Ensure the health, safety, and welfare of the ABI recipient;

(b) Prohibit firearms and ammunition at a provider service site;

(c) Address maintenance of sanitary conditions;

(d) Ensure each site operated by the provider is equipped with:
   1. Operational smoke detectors placed in strategic locations; and
   2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC;

(e) Ensure the availability of a supply of hot and cold running water with the water temperature at a tap, for water used by the ABI recipient, not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;

(f) Ensure that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensure that staff who supervise waiver participants in medication administration;

   1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and proper administration and storage of medication. The training shall be provided by a nurse, pharmacist, or medical doctor; and
   2. Document on a medication log all medication administered, including:
      a. Self-administered and over-the-counter drugs; and
      b. The date, time, and initials of the person who administered the medication;

(h) Ensure that the medication shall be:
   1. Kept in a locked container;
   2. Kept under double lock, if it is a controlled substance;
   3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the ABI recipient or self-administered at a program site other than the recipient's residence;
   4. Documented on a medication administration form; and
   5. Properly disposed of if it is discontinued; and

(i) Establish policy and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill;

   1. To be conducted and documented at least quarterly, and
   2. For a residential setting, scheduled to include a time when an ABI recipient is asleep; and

(c) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include:
   1. Usages;
   2. Goals;
   3. Organization of the agency; and
   4. Policies and procedures of the agency;

(b) Require documentation of all training provided which shall include:
   1. Type of training,
   2. Name and title of the trainer;
   3. Length of the training;
   4. Date of completion; and
   5. Signature of the trainee verifying completion;

(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with an ABI recipient, which shall include:
   1. Required orientation in brain injury;
   2. Identifying and reporting:
      a. Abuse;
      b. Neglect; and
   3. Exploitation;
   4. Unless the employee is a licensed or registered nurse, first aid provided by:
      a. An Individual certified as a trainer by the American Red Cross; or
      b. Other nationally accredited organization, and
   4. Coronary pulmonary resuscitation provided by:
      a. An individual certified as a trainer by the American Red
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Cross; or
b. Other nationally accredited organization;
(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service;
(e) Not be required to receive the training specified in paragraph (c) of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:
1. An occupational therapist or occupational therapy assistant providing occupational therapy;
2. A psychologist or psycholigist with autonomous functioning providing psychological services;
3. A speech-language pathologist providing speech therapy;
4. A board certified behavior analyst; or
5. A physical therapist or physical therapy assistant providing physical therapy; and
(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:
1. Required orientation in brain injury as specified in paragraph (c)(1), (2), (3), and (4) of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the ABI recipient to whom the volunteer shall provide services.
(20) A case management provider shall:
(a) Establish a human rights committee which shall:
1. Include an Individual:
   a. With a brain injury or a family member of an Individual with a brain injury;
   b. Not affiliated with the ABI provider; and
   c. Who has knowledge and experience in brain injury issues;
2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; and
3. Review and approve, in conjunction with the ABI recipient’s team, behavior intervention plans that include highly restrictive procedures or contain human rights restrictions;
(b) Establish a behavior intervention committee which shall:
1. Include one (1) Individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
2. Separate from the human rights committee; and
3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient’s team, an intervention plan that includes highly restrictive procedures or contains human rights restrictions;
(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:
1. Within thirty (30) days of the recipient’s admission into the ABI program;
2. Annually thereafter; and
3. Upon discharge from the ABI Waiver program.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI long term care waiver program and individual shall:
(a) Be at least eighteen (18) years of age;
(b) Be resident of Kansas;
(c) Be a resident of the state at the time of application;
(d) Be a resident of the state at the time of admission;
(e) Be a resident of the state at the time of discharge;
(f) Be a resident of the state at the time of death;
(g) Be a resident of the state at the time of termination;
(h) Be a resident of the state at the time of relocation;
(i) Be a resident of the state at the time of record keeping;
(j) Be a resident of the state at the time of payment;
(k) Be a resident of the state at the time of billing;
(l) Be a resident of the state at the time of reporting;
(m) Be a resident of the state at the time of evaluation;
(n) Be a resident of the state at the time of service delivery;
(o) Be a resident of the state at the time of service coordination;
(p) Be a resident of the state at the time of service management;
(q) Be a resident of the state at the time of service provision;
(r) Be a resident of the state at the time of service review;
(s) Be a resident of the state at the time of service monitoring;
(t) Be a resident of the state at the time of service evaluation;
(u) Be a resident of the state at the time of service improvement;
(v) Be a resident of the state at the time of service research; and
(w) Be a resident of the state at the time of service administration.
(2) An ABI long term care waiver recipient shall:
(a) Successfully complete a comprehensive evaluation which includes:
1. A cognitive evaluation;
2. A functional assessment;
3. An occupational therapy evaluation;
4. A speech-language pathology evaluation;
5. A physical therapy evaluation;
6. A psychological evaluation;
7. An vocational and social adjustment evaluation;
8. A physical examination;
9. A medical evaluation;
10. A psychiatric evaluation;
11. An educational evaluation;
12. A drug and alcohol evaluation;
13. A legal evaluation;
14. A vocational evaluation;
15. A psychological evaluation;
16. A social work evaluation;
17. An psychiatric evaluation;
18. A physical therapy evaluation;
19. An occupational therapy evaluation;
20. A speech-language pathology evaluation;
21. A medical evaluation;
22. An educational evaluation; and
23. A vocational evaluation;
(b) Be a resident of the state at the time of evaluation;
(c) Be a resident of the state at the time of placement;
(d) Be a resident of the state at the time of placement monitoring;
(e) Be a resident of the state at the time of placement review;
(f) Be a resident of the state at the time of placement improvement;
(g) Be a resident of the state at the time of placement research; and
(h) Be a resident of the state at the time of placement administration.
(3) From inception through June 30, 2009, after all first priority basis individuals outlined in subsection (2)(a) and (b) of this Section have been enrolled, the department shall enroll the remaining ABI rehabilitation waiver waiting list Individuals as described in 907 KAR 3:090, Section 7, who meet the eligibility criteria established in Section 3 of this administrative regulation.
(4) After all individuals have been enrolled pursuant to subsections (2)(a), (2)(b), and (3) of this section, the department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in Section 3 of this administrative regulation.
(5) If funding is not available, an individual shall be placed on the ABI long term care waiver waiting list in accordance with Section 7 of this administrative regulation.
(6) A certification packet shall be submitted to the department by a case manager or support broker on behalf of the applicant that contains:
(a) A copy of the allocation letter;
(b) An Assessment form - MAP-351;
(c) A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP-10, Waiver Services Physician Recommendation form;
(d) A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;
(e) An Plan of care form - MAP-109; and
(f) The ABI Recipient's Admission Discharge DCBS Notification Form - MAP-24C.
(7) An individual shall receive notification of potential funding allocation for the ABI long term care waiver services for the individual in accordance with Section 7 of this administrative regulation.
(8) An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.
(9) An Individual shall:
(a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;
(b) Be medically stable;
(c) Meet Medicaid eligibility requirements established in 907 KAR 1:095;
(d) Exhibit:
1. Cognitive;
2. Behavioral;
3. Motor; or
4. Sensory damage;
(e) Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and
(f) Receive notification of approval from the department.
(10) The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:
(a) Presenting problem;
(b) Plan of care goal;
(c) Expected benefit of the admission;
(d) Expected outcome;
(e) Service required; and
(f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.
(11) An ABI long term care waiver service shall not be furnished to an individual if the individual is:
(a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with mental retardation or a developmental disability; or
(b) Receiving a service in another home and community based waiver program.
(12) The department shall make:
(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and
(b) A determination of whether to admit an individual into the ABI long term care waiver program.
(13) To maintain eligibility as an ABI recipient:
(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:505; and
(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the status criteria for nursing facility services established in 907 KAR 1:022.

(14) An ABI case manager or support broker provider shall notify the local DCBS office and the department of an ABI Recipient's Admission Discharge DCBS Notification form – MAP-24C, if the ABI recipient is:
(a) Admitted to the ABI long term care waiver program;
(b) Discharged from the ABI long term care waiver program;
(c) Temporarily discharged from the ABI long term care waiver Program;
(d) Admitted to a nursing facility;
(e) Changing the primary provider; or
(f) Changing case management agency.

(15) The department may exclude an individual from receiving an ABI long term care waiver service for which the aggregate cost of ABI waiver service is reasonably expected to exceed the cost of a nursing facility service.

(16) Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:503 and shall be initiated if:
(a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding withdrawal; or
(b) An individual or legal representative fails to access the required service as set forth in the plan of care for a period greater than sixty (60) consecutive days without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:
1. A statement signed by the recipient or legal representative;
2. Copies of letters to providers; and
3. Copies of letters from providers;
(b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.
1. The recipient or legal representative shall have the burden of providing documentation of good cause including:
   a. A statement signed by the recipient or legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers;
2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:
   a. Sixty (60) days for an individual who does not reside in a facility; or
   b. For an individual who resides in a facility, the length of the extension shall not exceed ninety (90) days;
   c. For an ABI recipient who changes residence outside the Commonwealth of Kentucky;
   (d) For an ABI recipient who does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;
   (e) For an ABI recipient who is no longer able to be safely served in the community; or
   (f) For an ABI recipient who is no longer actively participating in services within the approved plan of care as determined by the Interdisciplinary Team;

(17) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:
(a) Simultaneous notice, at least thirty (30) days prior to the effective date of the action, to the:
   1. Department;
   2. ABI recipient or legal representative; and
   3. Case manager which shall include:
      a. A statement of the intended action;
      b. The basis for the intended action;
      c. The authority by which the action is taken; and
   d. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process;
(b) The case manager in conjunction with the provider to:
   1. Provide the ABI recipient with the name, address, and telephone number of each current ABI provider in the state;
   2. Provide assistance to the ABI recipient in making contact with another ABI provider;
   3. Arrange transportation for a requested visit to an ABI provider;
   4. Provide a copy of pertinent information to the ABI recipient or legal representative;
   5. Ensure the health, safety, and welfare of the ABI recipient until an appropriate placement is secured; and
   6. Provide assistance to ensure a safe and effective service transition.

(18) Voluntary termination and loss of an ABI long term care waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.
(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and
(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall be:
(a) Prior-authorized by the department; and
(b) Provided pursuant to the plan of care.

(2) An ABI waiver provider shall provide the following services to an ABI recipient:
(a) Casa management services which shall:
   1. Include initiation, coordination, implementation, monitoring of the assessment and reassessment, and intake and eligibility processes;
   2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings,
   3. Assist an ABI recipient and the interdisciplinary team with the development of an individualized plan of care and with updating the plan of care as necessary based on changes in the recipient's medical condition and supports;
   4. Include monitoring the delivery of services and the effectiveness of the plan of care, which shall:
      a. Be initially developed with the ABI recipient and legal representative, if appointed prior to the level of care determination;
      b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and
      c. Include sending the ABI Plan of Care form – MAP-109 to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;
   5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs and thirty (30) days prior to discharge and shall include:
      a. The skills or services to be obtained from the ABI long term care waiver program upon transition into the community; and
      b. A listing of the community supports available upon the transition;
   6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI long term care waiver;
   7. Be provided by a case manager who:
      a. Is a registered nurse;
      b. Is a licensed practical nurse;
      c. Has a bachelor's or master's degree in a human services field and meets all applicable requirements of the individual's particular field, including a degree in:
         i. Psychology;
         ii. Sociology;
         iii. Social work;
         iv. Rehabilitation counseling; or
         v. Occupational therapy;
      d. Is an independent case manager;
      e. Is employed by a free-standing case management agency;
      f. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
      g. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;
      h. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
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shall be accomplished through:
   a. The analysis of data concerning the:
      (i) Frequency;
      (ii) Intensity; and
      (iii) Duration of a behavior;
   b. Reports involved in implementing the behavioral service plan;
and
   c. A monthly summary that assesses the participant's status related to the approved plan of care.

6. Be provided by a behavior specialist who shall be:
   a. A psychologist;
   b. A psychologist with autonomous functioning;
   c. A licensed psychological associate;
   d. A psychiatrist;
   e. A licensed clinical social worker;
   f. A clinical nurse specialist with a master's degree in:
      (i) Psychiatric nursing; or
      (ii) Rehabilitation nursing;
   g. An advanced registered nurse practitioner (ARNP);
   h. A board certified behavior analyst; or
   i. A licensed professional clinical counselor; and

7. Be documented by a detailed staff note which shall include:
   a. The date of the service;
   b. The beginning and ending time;
   c. The signature and title of the behavioral specialist; and
   d. A summary of data analysis and progress of the individual toward meeting goals of the service;

(c) Community living supports shall:
   1. Be in provided in accordance with the recipient's plan of care, including:
      a. A nonmedical service;
      b. Supervision; or
      c. Socialization;
   2. Include assistance, prompting, observing, or training in activities of daily living;
   3. Include activities of daily living which shall include:
      a. Bathing;
      b. Eating;
      c. Dressing;
      d. Personal hygiene;
      e. Shopping; and
      f. Money management;
   4. Include prompting, observing, and monitoring of medications and nonmedical care not requiring a nurse or physician intervention;
   5. Include socialization, relationship building, and participation in community activities according to the approved plan of care which are therapeutic and not diversional in nature;

6 Accompany and assist an ABI recipient while utilizing transportation services;

7. Include documentation in a detailed staff note which shall include:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. Date of the service;
   c. Beginning and ending time; and
   d. Signature and title of the individual providing the service;

8. Not be provided to an ABI recipient who receives community residential services; and

9. Be provided by:
   a. Home health agency licensed and operating in accordance with 902 KAR 20 081;
   b. Community mental health center licensed and operating in accordance with 902 KAR 20 081;
   c. Community habilitation program certified at least annually by the department; or
   d. Supervised Residential Care setting certified at least annually by the department;
   e. Supervised residential care which shall be provided by:
      1. A community mental health center licensed and operating in accordance with 902 KAR 20 091; or
      2. An approved waiver provider certified at least annually by the department;

   (e) Supervised residential care which shall include the follow-
ing levels of supervision:
1. Supervised residential care level I which:
a. Shall not have greater than three (3) ABI recipients residing in a home rented or owned by the ABI provider;
b. Shall provide twenty-four (24) hour supervision;
c. Shall be based on the individual needs of a recipient;
d. May include the provision of trial periods of up to five (5) unsupervised hours per day for a member to work toward increased independence. If this option is utilized, an ABI provider shall develop an individualized plan for the recipient to work toward achieving increased independence, which shall include:
   (i) Necessary provisions to assure the recipient's health, safety, and welfare;
   (ii) Documented approval by the recipient's treatment team; and
   (iii) Periodic review and updates based on changes in the recipient's status;
   (iv) Shall provide assistance and training with daily living skills including the following activities:
      (a) Ambulating;
      (b) Dressing;
      (c) Grooming;
      (d) Eating;
      (e) Toileting;
      (f) Bathing;
      (g) Meal planning;
      (h) Grocery shopping and meal preparation;
      (i) Laundry;
      (j) Budgeting and financial matters;
      (k) Home care and cleaning;
      (l) Instruction in leisure skills;
      (m) Instruction in self medication; or
      (n) Social skills training, including the reduction or elimination of maladaptive behaviors in accordance with the plan of care,
      (o) Provide or arrange transportation to services, activities, and medical appointments as needed;
      (p) Accompany and assist an ABI recipient while utilizing transportation services as specified in the plan of care,
      (q) Include participation in medical appointments and follow-up care as directed by the medical staff;
      (r) Provide twenty-four (24) hour on-call support; and
      (s) Be documented by a detailed staff note which shall include:
         (i) Progress toward goals and objectives identified in the approved plan of care;
         (ii) The date of the service;
         (iii) Beginning and ending time; and
         (iv) The signature and title of the individual providing the service;
      2. Supervised residential care level II which shall:
         (a) Not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider;
         (b) Provide twelve (12) to eighteen (18) hours of supervision per day;
         (c) Be based on the individual needs of a recipient;
         (d) Require documented approval by the recipient's treatment team;
         (e) Require periodic review and updates based on changes in the recipient's status;
         (f) Provide assistance and training with daily living skills which shall include the following activities:
            (i) Ambulating;
            (ii) Dressing;
            (iii) Grooming;
            (iv) Eating;
            (v) Toileting;
            (vi) Bathing;
            (vii) Meal planning;
            (viii) Grocery shopping and meal preparation;
            (ix) Laundry;
            (x) Budgeting and financial matters;
            (xi) Home care and cleaning;
            (xii) Instruction in leisure skills;
            (xiii) Instruction in self medication; or
            (xiv) Social skills training, including the reduction or elimination of maladaptive behaviors in accordance with the plan of care;
            (xv) Provide or arrange transportation to services, activities, and medical appointments as needed;
            (xvi) Accompany and assist an ABI recipient while utilizing transportation services as specified in the plan of care;
            (xvii) Include participation in medical appointments and follow-up care as directed by the medical staff;
            (xviii) Provide twenty-four (24) hour on-call support; and
            (xix) Be documented by a detailed staff note which shall include:
               (i) Progress toward goals and objectives identified in the approved plan of care;
               (ii) The date of the service;
               (iii) Beginning and ending time;
               (iv) The signature and title of the individual providing the service; and
               (v) Evidence of one (1) daily face-to-face contact with the ABI recipient;
   (f) Supervised residential care level I, II, and III shall:
      1. Not include the cost of room and board;
      2. Be available to an ABI recipient who:
         (a) Does not reside with a caregiver;
         (b) Resides with a caregiver but demonstrates maladaptive behavior that places the ABI recipient at significant risk for injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents and it results in the need for the ABI recipient to be removed from the home to be in a more structured

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setting; or  
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;  
3. Utilize a modular home only if the:  
a. Wheels are removed;  
b. Home is anchored to a permanent foundation; and  
c. Windows are of adequate size for an adult to use as an exit in an emergency;  
4. Not utilize a motor home;  
5. Provide a sleeping room which ensures that an ABI recipient:  
a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;  
b. Does not share a room with an individual who presents a potential threat; and  
c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and  
6. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care; and  
7. Have applications reviewed monthly by a residential review committee, as required by the department, to consider applications for supervised residential care. The application shall be:  
a. Considered in the order in which it was received by the department;  
b. Rejected by the department no later than the close of business the day before the committee considers it in order to be considered at the monthly committee meeting; and  
c. Considered by the committee with the committee's decision based upon the following criteria:  
(i) The applicant does not reside with a caregiver;  
(ii) The applicant resides with a caregiver but demonstrates maladaptive behavior that places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or  
(a) The applicant demonstrates behavior that may result in potential legal problems if not ameliorated;  
8. Have applications reviewed by a residential review committee which is comprised of three (3) program staff of the Cabinet  
a. Each member shall have professional or personal experience with brain injury or other cognitive disabilities; and  
b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch;  
(g) Counseling services which:  
1. Shall be designed to help an ABI long term care waiver recipient resolve personal issues or interpersonal problems resulting from the recipient's ABI;  
2. Shall assist a family member in implementing an ABI long term care waiver recipient's approved plan of care;  
3. In a severe case, shall be provided as an adjunct to behavioral programming;  
4. Shall include substance abuse or chemical dependency treatment;  
5. Shall include building and maintaining healthy relationships;  
6. Shall develop social skills or the skills to cope with and adjust to the brain injury;  
7. Shall increase knowledge and awareness of the effects of an ABI;  
8. May include group counseling if the service is:  
a. Provided to a maximum of twelve (12) ABI recipients; and  
b. Included in the recipient's approved plan of care for:  
(i) Substance abuse or chemical dependency treatment;  
(ii) Building and maintaining healthy relationships;  
(iii) Developing social skills;  
(iv) Developing skills to cope with and adjust to a brain injury, including the use of effective remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and  
(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;  
9. Shall be provided by:  
a. A psychiatrist;  
b. A psychologist;  
c. A psychologist with autonomous functioning;  
d. A licensed psychological associate;  
e. A licensed clinical social worker;  
f. A clinical nurse specialist with a master's degree in psychiatric nursing;  
g. An advanced registered nurse practitioner (ARNP);  
h. A certified alcohol and drug counselor;  
i. A licensed marriage and family therapist; or  
j. A licensed professional clinical counselor; and  
10. Shall be documented by a detailed staff note which shall include:  
a. Progress toward the goals and objectives established in the plan of care;  
b. The date of the service;  
c. The beginning and ending time; and  
d. The signature and title of the individual providing the service;  
(h) Family training which shall:  
1. Provide training and counseling services for the families of individuals served in the ABI long term care waiver. Training to family or other responsible persons shall include:  
a. Interpretation or explanation of medical examinations and procedures;  
b. Treatment regimens;  
c. Use of equipment specified in the plan of care; or  
d. Advising how to assist the participant;  
e. Include updates as needed to safely maintain the participant at home;  
2. Include specified goals in the ABI recipient's plan of care;  
3. Be training provided to family that may include:  
a. A person who lives with; or  
b. A person who provides care to an ABI long term care waiver recipient and may include a:  
(i) Parent;  
(ii) Spouse;  
(iii) Child;  
(iv) Relative;  
(v) Foster family; or  
(vi) In-law; and  
5. Not include an individual who is employed to care for the consumer;  
6. Be provided by an approved ABI waiver provider that is certified at least annually which may include:  
a. An occupational therapist;  
b. A certified occupational therapy assistant;  
c. A licensed practical nurse;  
d. A physical therapist;  
e. A physical therapy assistant;  
f. A registered nurse;  
g. A speech-language pathologist;  
h. A psychiatrist;  
i. A psychologist;  
j. A psychologist with autonomous functioning;  
k. A licensed psychological associate;  
l. A clinical nurse specialist with a master's degree in:  
(i) Psychiatric nursing; or  
(ii) Rehabilitative nursing;  
m. An advanced registered nurse practitioner (ARNP);  
n. A certified alcohol and drug counselor;  
o. A licensed professional clinical counselor;  
p. A board certified behavior analyst;  
q. A licensed clinical social worker; or  
r. A licensed marriage and family therapist; and  
7. Be documented by a detailed staff note which shall include:  
a. Progress toward the goals and objectives established in the plan of care;  
b. The date of the service;  
c. The beginning and ending time; and  
d. The signature and title of the individual providing the service;  
(i) Nursing supports which shall include:  
1. A physician order to monitor medical conditions; or  
b. A physician order for training and oversight of medical procedures;  
2. The monitoring of specific medical conditions;
3. Services that shall be provided by:
   a. A registered nurse who meets the definition established in
      KRS 314.011(5); or
   b. A licensed practical nurse as defined by KRS 314.011(9)
      who works under the supervision of a registered nurse; and
4. Documentation by a detailed staff note which shall include:
   a. Progress toward the goals and objectives established in the
      plan of care;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (j) Occupational therapy which shall be:
      1. A physician-ordered evaluation of an ABI recipient's level of
         functioning by applying diagnostic and prognostic tests;
      2. Physician-ordered services in a specified amount and dura-
         tion to guide an ABI recipient in the use of therapeutic, creative,
         and self-care activities to assist the ABI recipient in obtaining
         the highest possible level of functioning;
   3. Exclusive of maintenance or the prevention of regression;
   4. Provided by an occupational therapist or an occupational
      therapy assistant if supervised by an occupational therapist in ac-
      cordance with 201 KAR 28:130; and
   5. Documented by a detailed staff note which shall include:
      a. Progress toward goals and objectives identified in the approved
         plan of care;
      b. The date of the service;
      c. Beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (k) A physical therapy service which shall be:
      1. A physician-ordered evaluation of an ABI recipient by apply-
         ing muscle, joint, and functional ability tests;
      2. Physician-ordered treatment in a specified amount and dura-
         tion to assist an ABI recipient in obtaining the highest possible level
         of functioning;
      3. Training of another ABI provider to improve the level of func-
         tioning of the recipient in that provider's service setting;
      4. Exclusive of maintenance or the prevention of regression;
      5. Provided by a physical therapist or a physical therapy assis-
         tant supervised by a physical therapist in accordance with 201
      KAR 22:001 and 201 KAR 22:020; and
   6. Documented by a detailed staff note which shall include:
      a. Progress made toward outcomes identified in the plan of
         care;
      b. The date of the service;
      c. Beginning and ending time of the service; and
      d. The signature and title of the individual providing the service;
      (l) A respite service which shall:
      1. Be provided only to an ABI long term care waiver recipient
         unable to administer self-care;
      2. Be provided by a:
         a. Nursing facility;
         b. Community mental health center;
         c. Home health agency;
         d. Supervised residential care provider;
         e. Adult day training provider; or
         f. Adult day health care provider;
      3. Be provided on a short-term basis due to:
         a. Absence; or
         b. Need for relief of an individual providing care to an ABI long
            term care waiver recipient;
      4. Be limited to 5,760 fifteen (15) minute units per calendar
         year unless an individual's usual caregiver is unable to provide
         care due to:
         a. Death in the family;
         b. Serious illness; or
         c. Hospitalization;
      5. Not be provided to an ABI long term care waiver recipient
         who receives supervised residential care;
      6. Not include the cost of room and board if provided in a nurs-
         ing facility; and
      7. Be documented by a detailed staff note which shall include:
         a. Progress toward goals and objectives identified in the ap-
            proved plan of care;
         b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (m) Speech therapy services which shall be:
      1. A physician-ordered evaluation of an ABI recipient with a
         speech, hearing, or language disorder;
      2. A physician-ordered habilitative service in a specified amount
         and duration to assist an ABI recipient with a speech and
         language disability in obtaining the highest possible level of func-
         tioning;
      3. Exclusive of maintenance or the prevention of regression;
      4. Provided by a speech language pathologist; and
      5. Documented by a detailed staff note which shall include:
         a. Progress toward goals and objectives identified in the ap-
            proved plan of care;
         b. The date of the service;
         c. The beginning and ending time; and
         d. The signature and title of the individual providing the service;
   (n) Adult day training services which shall:
      1. Be provided by:
         a. An adult day training center which is certified at least an-
            nually by the department;
         b. An outpatient rehabilitation facility which is licensed and
            operating in accordance with 902 KAR 20:190; or
         c. A community mental health center licensed and operating in
            accordance with 902 KAR 20:091;
      2. Focus on enabling the individual to attain or maintain the
         individual's maximum functional level and reintegrate the indi-
         vidual into the community;
      3. Not exceed a staffing ratio of five (5) ABI recipients to one
         (1) staff person unless an ABI recipient requires individualized
         special services;
      4. Include the following services:
         a. Social skills training related to problematic behaviors identi-
            fied in the recipient's plan of care;
         b. Sensory or motor development;
         c. Reduction or elimination of a maladaptive behavior,
         d. Provocational; or
      e. Teaching concepts and skills to promote independence includ-
         ing:
      (i) Following instructions;
      (ii) Attendance and punctuality;
      (iii) Task completion;
      (iv) Budgeting and money management;
      (v) Problem solving; or
      (vi) Safety;
      5. Be provided in a nonresidential setting;
      6. Be developed in accordance with an ABI waiver service re-
         cipient's overall approved plan of care;
   7. Reflect the recommendations of an ABI waiver service reci-
      pient's interdisciplinary team;
      8. Be appropriate:
         a. Given an ABI waiver service recipient's
            (i) Age;
         (ii) Level of cognitive and behavioral function; and
         (iii) Interest;
         b. Given an ABI waiver service recipient's ability prior to and
            after the recipient's injury; and
         c. According to the approved plan of care and be therapeutic in
            nature and not diversional;
      9. Be coordinated with:
         a. Occupational;
         b. Speech, or
         c. Other rehabilitation therapy included in an ABI long term
            care waiver recipient's plan of care;
   10. Provide an ABI long term care waiver recipient with an
        organized framework within which to function in the recipient's daily
        activities;
      11. entail frequent assessments of an ABI long term care
          waiver recipient's progress and be appropriately revised as neces-
          sary; and
      12. Be documented by a detailed staff note which shall include:
          a. Progress toward goals and objectives identified in the ap-
             proved plan of care;
          b. The date of the service;
c. The beginning and ending time; and
d. The signature and title of the individual providing the service; and

- A monthly summary that assesses the participant's status related to the approved plan of care;
- Adult day health care services which shall:
  1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:065; and
  2. Include the following basic services and necessities provided to a Medicaid ABI long term care waiver recipient during the posted hours of operation:
    a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
       (i) Ostomy care;
       (ii) Urinary catheter care;
       (iii) Decubitus care;
       (iv) Tube feeding;
       (v) Venipuncture;
       (vi) Tracheotomy care; or
       (vii) Medical monitoring;
    b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
    c. Snacks;
    d. Supervision by a registered nurse;
    e. Daily activities that are appropriate, given an ABI long term care waiver recipient's:
       (i) Age;
       (ii) Level of cognitive and behavioral function;
       (iii) Interest; and
    f. Routine services that meet the daily personal and health care needs of an ABI long term care waiver recipient, including:
       (i) Monitoring of vital signs;
       (ii) Assistance with activities of daily living; and
       (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by an ABI long term care waiver recipient;
  3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;
  4. Focus on enabling the individual to attain or maintain the individual's maximum functional level and reintegrate an individual into the community by providing the following training:
    a. Social skills training related to problematic behaviors identified in the ABI long term care waiver recipient's plan of care;
    b. Sensory or motor skills training for an ABI long term care waiver recipient's plan of care;
    c. Reduction or elimination of a maladaptive behavior for the ABI long term care waiver recipient's plan of care;
    d. Prevocational; or
    e. Teaching concepts and skills to promote independence including:
       (i) Following instructions;
       (ii) Attendance and punctuality;
       (iii) Task completion;
       (iv) Budgeting and money management;
       (v) Problem solving; or
       (vi) Safety;
  5. Be provided in a nonresidential setting;
  6. Be developed in accordance with an ABI long term care waiver recipient's overall approved plan of care, therapeutic in nature and not diversional;
  7. Reflect the recommendations of an ABI long term care waiver recipient's interdisciplinary team;
  8. Include ancillary services in accordance with 907 KAR 1.023 if ordered by a physician, physician assistant, or advanced registered nurse practitioner in an ABI long term care waiver recipient's adult day health care plan of treatment. Ancillary services shall:
    a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the ABI long term care waiver recipient or adult day health care center staff;
    b. Be reasonable and necessary for the ABI long term care waiver recipient's condition;
    c. Be rehabilitative in nature;
    d. Include:
       (i) Physical therapy provided by a physical therapist or physical therapist assistant;
       (ii) Occupational therapy provided by an occupational therapist or occupational therapist assistant, or
       (iii) Speech therapy provided by a speech-language pathologist; and
    e. Comply with the:
       (i) Physical;
       (ii) Occupational; and
    (iii) Speech therapy requirements established in Technical Criteria for Reviewing Ancillary Services for Adults in accordance with 907 KAR 1.030, Section 3 and 6.
  9. Be provided to an ABI long term care waiver recipient by the health team in an adult day health care center which may include:
    a. A physician;
    b. A physician assistant;
    c. An advanced registered nurse practitioner (ARNP);
    d. A registered nurse;
    e. A licensed practical nurse;
    f. An activities director;
    g. A physical therapist;
    h. A physical therapist assistant;
    i. An occupational therapist;
    j. An occupational therapist assistant;
    k. A speech pathologist;
    l. A social worker;
    m. A nutritionist;
    n. A health aide;
    o. An LPCC;
    p. A licensed marriage and family therapist;
    q. A certified psychologist with autonomous functioning; or
    r. A licensed psychological associate;
  10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20.066 and from information in the Map-351 and revised as needed;
  11. Be documented by a detailed staff note which shall include:
    a. Progress toward goals and objectives identified in the approved plan of care;
    b. The date of the service;
    c. The beginning and ending time;
    d. The signature and title of the individual providing the service; and
    e. A monthly summary that assesses the participant's status related to the approved plan of care;
  (p) Supported employment which shall be:
    a. Intensive, ongoing services for an ABI long term care waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;
    2. Provided by:
    a. Supported employment provider;
    b. Sheltered employment provider; or
    c. Structured day program provider;
    d. Provided one-on-one;
    3. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI long term care waiver recipient's file;
  5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;
  6. An activity needed to sustain paid work by an ABI long term care waiver recipient receiving waiver services, including;
    a. Supervision; and
    b. Training;
  7. Exclusive of work performed directly for the supported employment provider; and
  8. Documented by a time and attendance record which shall include:
    a. Progress toward the goals and objectives identified in the plan of care;
    b. The date of service;
    c. The beginning and ending time; and
    d. The signature and title of the individual providing the service; and
  (q) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
2. Enable an ABI recipient to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
3. Be ordered by a physician and submitted on a Request for Equipment form-MAP-95 and include three (3) estimates for vision and hearing;
4. Include equipment necessary to the proper functioning of specialized items;
5. Not be available through the department's durable medical equipment, vision, or hearing program;
6. Not be necessary for life support;
7. Meet applicable standards of manufacture, design, and installation; and
8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient;
   (r) Environmental and minor home adaptations which shall:
   1. Be provided in accordance with applicable state and local building codes;
   2. Be provided to an ABI recipient if:
      a. Ordered by a physician;
      b. Prior authorized by the ABIB;
      c. Submitted on a Request for Equipment form - MAP-95 by a case manager or support broker;
      d. Specified in an ABI long term care waiver recipient's approved plan of care;
      e. Necessary to enable an ABI recipient to function with greater independence within the recipient's home; and
   1. Without the modification, the ABI recipient requires institutionalization;
   3. Not include a vehicle modification;
   4. Be limited to no more than $2,000 for an ABI recipient in a twelve (12) month period; and
   5. If entailing:
      a. Electrical work, be provided by a licensed electrician, or
      b. Plumbing work, be provided by a licensed plumber;
   (e) Assessment services which shall:
   1. Be a comprehensive assessment which shall identify an ABI long term care waiver recipient's needs and the services that the recipient's family cannot manage or arrange for the recipient;
   2. Evaluate an ABI long term care waiver recipient's physical health, mental health, social supports, and environment;
   3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;
   4. Be conducted by an ABI case manager or support broker;
   5. Be conducted within seven (7) calendar days of receipt of the request for assessment;
   6. Include at least one (1) face-to-face contact with the ABI long term care waiver recipient and, if appropriate, the recipient's family by the assessor in the ABI long term care waiver recipient's home; and
   7. Not be reimbursable if the individual does not receive a level of care certification; and
   (f) Reassessment service which shall:
   1. Be performed at least every twelve (12) months;
   2. Be conducted using the same procedures as for an assessment service;
   3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
   4. Not be reimbursable if conducted during a period that the ABI long term care waiver recipient is not covered by a valid level of care certification; and
   5. Not be retroactive
Section 5. Exclusions of the Acquired Brain Injury Waiver Program A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:
   (A) A stroke treated in a nursing facility providing routine rehabilitation services;
   (B) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
   (C) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including:
      (a) Senile dementia;
      (b) Organic brain disorder;
      (c) Alzheimer's disease;
      (d) Alcoholism; or
      (e) Another addiction;
      (F) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
      (G) A birth defect;
      (H) Mental retardation without an etiology to an acquired brain injury;
      (7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community.
Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.
(2) There shall be three (3) classes of incidents as follows:
   (a) A class I incident which shall:
      1. Be minor in nature and not create a serious consequence;
      2. Not require an investigation by the provider agency;
      3. Be reported within twenty-four (24) hours to the:
         a. Case manager;
         b. Support broker;
         c. Be reported to the guardian as directed by the guardian; and
      4. Be retained on file at the:
         a. Provider and case management agency;
         b. Support brokerage agency;
   (b) A class II incident which shall:
      1. Be serious in nature;
      2. Include a medication error; or
      3. Involve the use of:
         (i) Physical; or
         (ii) Chemical restraint;
      2. Require an investigation which shall:
         a. Be initiated by the provider agency within twenty-four (24) hours of discovery; and
         b. Shall involve the case manager or support broker;
      3. Be reported to the following by the provider agency:
         a. The case manager or support broker within twenty-four (24) hours of discovery
   (c) A class III incident which shall:
      1. Be grave in nature;
      2. Involve suspected:
         (i) Abuse;
         (ii) Neglect; or
         (iii) Exploitation;
      3. Involve a medication error which requires a medical intervention; or
      4. Be a death;
      2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and
      3. Be reported by the provider agency to:
         a. The case manager or support broker within eight (8) hours of discovery;
         b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;
   (d) The guardian within eight (8) hours of discovery; and
   (e) ABIB within eight (8) hours of discovery followed by:
      (i) A complete written report of the incident investigation; and
      (ii) Follow-up within ten (10) calendar days of discovery;
   (f) A class III incident which shall:
      1. Be grave in nature;
      2. Involve suspected:
         (i) Abuse;
         (ii) Neglect; or
         (iii) Exploitation;
      3. Involve a medication error which requires a medical intervention; or
      4. Be a death;
      2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and
      3. Be reported by the provider agency to:
         a. The case manager or support broker within eight (8) hours of discovery;
         b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;
   (g) The guardian within eight (8) hours of discovery; and
   (h) ABIB within eight (8) hours of discovery followed by:
      (i) A complete written report of the incident investigation; and
      (ii) Follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to ABIB shall occur on the following business day.
Section 7. The following documentation with a complete written report shall be submitted for a death:
   (a) A current plan of care;
   (b) A current list of prescribed medications including PRN me-
dictions;
(c) A current crisis plan;
(d) Medication Administration Review (MAR) forms for the current and previous month;
(e) Staff notes from the current and previous month including details of physician and emergency room visits;
(f) Any additional information requested by the department;
(g) A coroner’s report; and
(h) If performed, an autopsy report.

Section 7. ABI Long Term Waiting List. (1) An individual eighteen (18) years of age or older applying for an ABI long term care waiver service shall be placed on a statewide ABI long term care waiver waiting list which shall be maintained by the department.
(2) In order to be placed on the ABI long term care waiver waiting list, an individual shall submit to the department:
(a) Completed Acquired Brain Injury Waiver Services Program Application form MAP-26, and
(b) Waiver Services-Physician Recommendation form - MAP-10.
(3) The order of placement on the ABI long term care waiver waiting list shall be determined by:
(a) Chronological date of receipt of the Waiver Services-Physician Recommendation form - MAP-10;
(b) Category of need of the individual as follows:
1. Emergency. An immediate service is indicated as determined by:
   a. The individual currently is demonstrating behavior related to the individual’s acquired brain injury that places the recipient, caregiver, or others at risk of significant harm;
   b. The individual is demonstrating behavior related to the individual’s acquired brain injury which has resulted in the individual’s arrest;
   2. Nonemergency; and
   (c) The Emergency Committee which shall consider applications for the Acquired Brain Injury long term care waiver program for emergency placement. The Emergency Committee meetings shall regularly occur during the fourth week of each month. To be considered at the monthly committee meeting, an applicant shall be received by the department no later than three (3) business days before the scheduled committee meeting.
   1. The Emergency Review Committee shall be comprised of three (3) program staff of the Cabinet;
   a. Each member shall have professional or personal experience with brain injuries or other cognitive disabilities, and
   b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch.
2. In determining chronological status, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Waiver Services-Physician Recommendation form - MAP-10 shall be maintained and not changed if an individual is moved from one (1) category of need to another.
   (5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to an individual or caregiver, or the nature of the individual’s medical need.
   (6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.
   (7) If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.
   (8) A written notification of placement on the waiting list shall be mailed to the individual or the individual’s legal representative and case management provider if identified.
   (9) Maintenance of the ABI long term care waiver waiting list shall occur as follows:
   (a) The department shall, at a minimum, update the waiting list annually;
   (b) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:
      1. Individual,
      2. Individual’s legal representative; and
      3. ABI case manager;
   (10) Reassignment of category of need shall be completed based on the updated information and validation process.
   (11) An individual or legal representative may submit a request for reconsideration of movement from one (1) category of need to another at any time an individual’s status changes.
   (12) An individual shall be removed from the ABI long term care waiver waiting list if:
   (a) After a documented attempt, the department is unable to locate the individual or the individual’s legal representative;
   (b) The individual is deceased; or
   (c) The individual or individual’s legal representative refuses the offer of ABI long term care waiver services and does not request to be maintained on the ABI long term care waiver waiting list.
   (13) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to:
   (a) Individual or to the individual’s legal representative; and
   (b) ABI case manager.
   (14) The removal of an individual from the ABI long term care waiver waiting list shall not prevent the submittal of a new application at a later date.
   (15) Potential funding allocated for services for an individual shall be based upon:
   (a) The individual’s category of need; and
   (b) The individual’s chronological date of placement on the ABI long term care waiver waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI long term care waiver recipient participating in CDO shall include:
(a) A home and community support service which shall:
1. Be available only under the consumer directed option,
2. Be provided in the consumer’s home or in the community;
3. Be based upon therapeutic goals and not be diversional in nature;
4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-CDO acquired brain injury service; and
5. Be respite for the primary caregiver; or
   b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in the individual’s own home or the home of a family member and may include:
   (i) Routine household tasks and maintenance;
   (ii) Activities of daily living;
   (a) Personal hygiene;
   (v) Shopping;
   (v) Money management;
   (vi) Medication management;
   (vii) Socialization;
   (viii) Relationship building;
   (ix) Meal planning;
   (x) Meal preparation;
   (xi) Grocery shopping; or
   (xii) Participation in community activities;
   (b) Goods and services which shall:
      1. Be individualized,
      2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;
      3. Not include experimental goods or services; and
      4. Not include chemical or physical restraints;
   (c) A community day support service which shall:
      1. Be available only under the consumer directed option,
      2. Be provided in a community setting;
      3. Be tailored to the consumer’s specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for:
      a. Work or community activities;
b. Socialization; and
c. Leisure or recreation activities;
      4. Be based upon therapeutic goals and not be diversional in
nature, and
5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-CDO acquired brain injury service.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(4) A consumer, including a named consumer, shall choose a provider and the choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:
   (a) Be at least twenty-one (21) years of age or older;
   (b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
   (c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:
   (a) Imminent danger to the consumer's health, safety, or welfare exists;
   (b) The consumer fails to pay patent liability;
   (c) The consumer's plan of care indicates the consumer requires more hours of care than the program can provide, jeopardizing the consumer's safety and welfare due to being left alone without a caregiver present, or
   (d) The consumer, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(8) The department may terminate a consumer from CDO services if the department determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Except as provided in subsection (7) of this section, prior to a consumer's termination from CDO services, the support broker shall:
   (a) Notify the assessment or reassessment service provider of potential termination;
   (b) Assist the consumer in developing a resolution and prevention plan;
   (c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;
   (d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
   (e) Assist the consumer in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of CDO services, the department shall:
   (a) Notify the consumer in writing of its decision to terminate the consumer's CDO participation; and
   (b) Except in a case where a consumer failed to pay patent liability, inform the consumer of the right to appeal the department's decision in accordance with Section 10 of this administrative regulation.

(11) A CDO provider shall:
   (a) Be selected by the consumer;
   (b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
   (c) Be eighteen (18) years of age or older;
   (d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
   (e) Be able to communicate effectively with the consumer, consumer representative, or family;
   (f) Be able to understand and carry out instructions;
   (g) Be able to keep records as required by the consumer;
   (h) Submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;
   (i) Submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;
   (j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (5); and
   (k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI long-term care waiver recipients minus five (5) percent.

(14) The department shall not adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(15) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:
   1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and
   2. The department approves the adjustment.

(16) The department shall consider the following factors in determining whether to allow for a budget adjustment:
   1. If the proposed services are necessary to prevent imminent institutionalization;
   2. The cost effectiveness of the proposed services; and
   3. Protection of the consumer's health, safety, and welfare.

(17) A significant change has occurred in the recipient's:
   a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
   b. Natural support system; or
   c. Environmental living arrangement resulting in the recipient's relocation.

(18) A consumer's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(19) Unless approved by the department pursuant to subsection (15)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(20) A support broker shall:
   a. Provide needed assistance to a consumer with any aspect of CDO or blended services;
   b. Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;
   c. Comply with applicable federal and state laws and requirements;
   d. Continually monitor a consumer's health, safety, and welfare; and
   e. Complete or revise a plan of care using person-centered...
(15) For a CDO participant, a support broker may conduct an assessment or reassessment.
(17) Financial Management Services shall:
1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;
2. Include payroll processing associated with an individual hired by a consumer or the consumer's representative;
3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;
4. Be performed by an entity:
   a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672a; and
   b. With at least two (2) years of experience working with acquired brain injury.
5. Include preparing fiscal accounting and expenditure reports for:
   a. A consumer or consumer's representative; and
   b. The department.

Section 9. Reimbursement and Coverage. (1) The department shall reimburse a participating provider for a service provided to a Medicaid eligible person who meets the ABI long term care waiver program requirements as established in this administrative regulation.
(2) The department shall reimburse an ABI participating long term waiver provider for a prior-authorized ABI long term waiver service, if the service is:
   (a) Included in the plan of care and is medically necessary, and
   (b) Essential to provide an alternative to institutional care to an individual with acquired brain injury that requires maintenance services.
(3) Exclusions to acquired brain injury long term waiver program. Under the ABI long term waiver program, the department shall not reimburse a provider for a service provided:
   (a) To an individual who has a condition identified in 907 KAR 3:210, Section 3; or
   (b) Which has not been prior authorized as a part of the plan of care.
(4) Payment Amounts.
   (a) A participating ABI long term waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a recipient.
   (b) A participating ABI long term waiver service provider certified in accordance with this administrative regulation shall be reimbursed at the lesser of:
      1. The provider's usual and customary charge; or
      2. The Medicaid fixed upper payment limit per unit of service as established in subsection (5) of this section.
(5) Fixed upper payment limits.
   (a) The following rates shall be the fixed upper payment limits, in effect on the effective date of this administrative regulation, for ABI long term care waiver services in conjunction with the corresponding units of service:

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>1 month</td>
<td>$375.00 - limited to one (1) unit per member per month</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>15 minutes</td>
<td>$5.56 - limited to 160 units per member, per calendar week.</td>
</tr>
<tr>
<td>Respite Care</td>
<td>5 minutes</td>
<td>$4.00 - limited to 5760 units, equal to 1440 hours, per member, per calendar year</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>15 minutes</td>
<td>$3.19 - limited to 160 units per member, per calendar week.</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>15 minutes</td>
<td>$4.03 - limited to 160 units per member, per calendar week.</td>
</tr>
<tr>
<td>Supported Employment</td>
<td>15 minutes</td>
<td>$7.98 - limited to 160 units per member, per calendar week alone or in combination with adult day training</td>
</tr>
<tr>
<td>Behavior Programming</td>
<td>15 minutes</td>
<td>$33.61 - limited to 80 units per member, per calendar month for the first three (3) months; after initial three (3) months limited to forty-eight (48) units per member, per month</td>
</tr>
<tr>
<td>Counseling – Individual</td>
<td>15 minutes</td>
<td>$23.84 - limited to sixteen (16) units per member, per day.</td>
</tr>
<tr>
<td>Counseling – Group</td>
<td>15 minutes</td>
<td>$5.75 - limited to 48 units per member, per calendar month</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>15 minutes</td>
<td>$25.90 - limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>15 minutes</td>
<td>$28.41 - limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Specialized Medical Equipment and Supplies (see subsection (2) of this section)</td>
<td>Per Item</td>
<td>As negotiated by the department</td>
</tr>
<tr>
<td>Environmental Modification</td>
<td>Per Modification</td>
<td>Actual cost not to exceed $2000 per member, per calendar year</td>
</tr>
<tr>
<td>Supervised Residential Care Level I</td>
<td>(1) calendar day</td>
<td>$200.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Supervised Residential Care Level II</td>
<td>(1) calendar day</td>
<td>$150.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Supervised Residential Care Level III</td>
<td>(1) calendar day</td>
<td>$75.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Nursing Supports</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 28 units per member, per calendar week</td>
</tr>
<tr>
<td>Family Training</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 8 units per member, per calendar week</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Assessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Assessment or Re-assessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Consumer Directed Options</td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget</td>
<td></td>
</tr>
<tr>
<td>Home and Community Supports</td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget</td>
<td></td>
</tr>
<tr>
<td>Community Day Supports</td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget</td>
<td></td>
</tr>
<tr>
<td>Goods and Services</td>
<td>Service limited by dollar amount prior authorized by</td>
<td></td>
</tr>
</tbody>
</table>
b. Specialized medical equipment and supplies shall be reimbursed on a per item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:
1. They are not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and
2. They are provided to an individual participating in the ABI waiver program.
(c) Respite care may exceed 1440 hours in a twelve (12) month period if an individual’s usual caregiver is unable to provide care due to:
1. Death in the family;
2. Senescent illness; or
3. Hospitalization.
(d) Payment for respite care provided in a setting other than a nursing facility shall not include the cost of room and board. If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.
(e) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall be made only for the supervision and training required as the result of the ABI recipient’s disabilities and shall not include payment for supervisory activities normally rendered.
(f) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III). For an individual receiving supported employment services, documentation shall be maintained in the individual’s record demonstrating that the services are not currently available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).
(g) Payment Exclusions. Payment shall not include:
(a) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility. If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual;
(b) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;
(c) Excluding an environmental modification as established in the Acquired Brain Injury Services and Reimbursement Program Manual, the cost of maintenance, upkeep, or an improvement to a recipient’s place of residence;
(d) The cost of a service that is not listed in the approved plan of care; or
(e) A service provided by a family member unless provided under an approved service through consumer directed option.
(7) Records Maintenance. A participating provider shall:
(a) Maintain fiscal and service records for a period of at least six (6) years; and
(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to subsection (1) of this section or 907 KAR 1:672, Sections 2, 3, and 4; and
(c) Upon request, make available service and financial records to a representative or designee of the:
1. Commonwealth of Kentucky, Cabinet for Health and Family Services or its designated agent;
2. United States Department for Health and Human Services, Comptroller General;
3. United States Department for Health and Human Services, Centers for Medicare and Medicaid Services (CMS),
4. General Accounting Office;
5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

(1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.
(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation:
(a) Regarding a provider’s reimbursement shall be in accordance with 907 KAR 1.671, Sections 8 and 9, or
(b) Not regarding a provider’s reimbursement shall be in accordance with 907 KAR 1.671.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP-10, Physician Recommendations for Waiver Services", July 2008 edition;
(b) "MAP-24C, Admission, Discharge or Transfer of an Individual in the ABI/SCL Program", July 2008 edition;
(c) "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008 edition;
(d) "MAP-045, Incident Report", July 2008 edition;
(e) "MAP-95, Request for Equipment Form", June 2008 edition;
(f) "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008 edition;
(g) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008 edition;
(h) "MAP-351, Medicaid Waiver Assessment", July 2008 edition;
(i) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", July 2008 edition;
(j) "Mayo-Portland Adaptability Inventory-4", March 2003 edition;
(k) "Person Centered Planning: Guiding Principles", March 2005 edition; and
(l) "Family Guide to The Rancho Levels of Cognitive Functioning", August 2006 edition;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 7, 2008
FILED WITH LRC: November 10, 2008 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 22, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services, Administrative Hearings Branch: Conference Room, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 15, 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 elect to 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 31, 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
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Bland (502) 564-5560 or Cheryl Bentley (502) 564-6204

(1) Provide a brief summary of:
(a) What this administrative regulation does:
This administrative regulation establishes the coverage and reimbursement provisions related to home- and community-based waiver services for individuals with acquired brain injury as an alternative to institutional care services and including a consumer-directed services program.
(b) The necessity of this administrative regulation:
This administrative regulation is necessary to establish the coverage and reimbursement provisions relating to acquired long term care waiver services in order to provide an alternative to institutional care for individuals with ABI who require maintenance services.
(c) How this administrative regulation conforms to the content of the authorizing statutes:
This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation assists in the effective administration of the statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
This 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 will assist in the effective administration of the statutes:
This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation:
This administrative regulation is expected to impact individuals diagnosed with acquired brain injury by providing home- and community-based services as an alternative to institutionalized services. This administrative regulation allows qualified Medicaid enrolled providers in the Commonwealth of Kentucky to receive reimbursement for acquired brain injury services provided to qualifying enrolled individuals. During the first year, the budget allows for fifty (50) individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 150 individuals to receive these waiver services, totaling 150 individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
Entities choosing to provide ABI services and receive Medicaid reimbursement are required to be enrolled as a Medicaid provider. During the first year, the budget allows for fifty (50) individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 150 individuals to receive these waiver services, totaling 150 individuals.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)?
This regulation should not impose additional costs on Medicaid providers. Organizations applying as new providers may incur new business start-up costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)?
The new administrative regulation offers an alternative to institutional care for individuals that have reached a plateau in their rehabilitation level and require maintenance services to avoid institutionalization and to live safely in their community. The long term nature of the program will complete the continuum of care and complement Kentucky’s existing acute brain injury waiver program which focused on intensive rehabilitation services. The waiver program also provides the option for self-directed services for individuals.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) estimates a cost of approximately $2.3 million during the state fiscal year 2009 to serve 50 individuals with this program.
(b) On a continuing basis: DMS estimates a cost of approximately $12.1 million during the state fiscal year 2010 as a result of enrolling an additional 100 individuals (for a total enrollment of 150 individuals) in the 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 Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This program does require an increase in funding which was included and approved by the legislation in the 2008 and 2010 biennial budget.

(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.

Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all those individuals or entities regulated by it. Tiering was not applicable 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 counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including counties, fire departments or school districts) will be impacted by this administrative regulation? The Department for Community Based Services (DCBS), Department for Aging and Independent Living (DAIL), Area Agencies on Aging (AAA), Protection and Advocacy (P&A), and Vocational Rehabilitation will be impacted by this administrative regulation. This amendment will affect Medicaid eligible individuals diagnosed with ABI who choose to access these waiver services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 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. KRS 205.5605(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home- and community-based services waivers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including 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 counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government during the first year of the program administration.
(b) How much revenue will this administrative regulation generate for the state or local government (including counties, fire departments, or school districts)?

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fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government during subsequent years of the program administration.

(c) How much will it cost to administer this program for the first year? Approximately 2.3 million dollars is the projected cost during the first year.

(d) How much will it cost to administer this program for subsequent years? Approximately 12.1 million dollars is the projected cost during the subsequent year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:
The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 12, 2008 at 10:00 a.m., in Room 154 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the October 14, 2008 meeting were approved.

Members: Senators Dick Roeding, Joey Pendleton, and Gary Tapp; and Representatives Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Les Beavers, Kentucky Department of Veterans Affairs; Frank Dempsey, Department of Revenue; Gerald Hoppman, Charles Robinette, Board of Specialists in Hearing Instruments; Karen Greenwell, Noel Record, Kentucky Board of Barbering; Jonathan Doran Buckley, Kentucky Board of Licensure for Professional Engineers and Land Surveyors; Ryan Halloran, Board of Chiropractic Examiners and Kentucky Board of Licensure for Private Investigators; Larry Bond and Angela Robertson, Kentucky Boxing and Wrestling Authority; Kerry Wright Robertson, Board of Licensure of Occupational Therapy; Mary Pederson, Kentucky Board of Licensure of Private Investigators; Charles O’Neal, Lee Rowland, Kentucky Board of Emergency Medical Services; J.D. Chaney Kentucky League of Cities; Tom Troth, Kentucky Association of Counties; Ron Wolfe, Louisville Metro; Karen Alexy, Gerry Buynak, Jon Gassett, Jeff Ross, Catherine York, Kentucky Department of Fish and Wildlife Resources; Abigail Powell, Ronald Price, Division of Water, Lori Gowans, Division for Air Quality; Amy Barker, James VanHorn, Justice and Public Safety Cabinet; Keith Peery, Morgan Sprague, Department of Kentucky State Police; Steve Lynn, Department of Criminal Justice Training; Dana Fugazzi, Jeff Wolfe, Transportation Cabinet; Kevin Brown, Michael Miller, Larry Sneen, Kentucky Department of Education; Lisa Cochran, Larry Moore, Department for Workplace Investment; David Stumbo, Dandridge Walton, Labor Cabinet; Sharon Clark, Treva Donnell, Brad Nelson, Al Perkins, Ray Perry, Amanda Ross, Malinda Shepherd, DJ Wasson, Department of Insurance; Shane O’Donley, Carrie Banahan, Cabinet for Health and Family Services; Stephanie Brammer-Bames, Stephanie Hold, Michael Lawrence; Elizabeth Johnson, Stuart Owen, Nevel Wise, Department of Medicaid Services; Rachel Sisler Dockal, Mary Sparrow, Shari Sullivan, Steve Veno, Child Support Enforcement.

The Administrative Regulation Review Subcommittee met on Wednesday, November 12, 2008, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Grant Programs

11 KAR 5 200. Go Higher Grant Program. Becky Gilpatrick, Student Aid Branch manager, and Melissa Justice, senior associate counsel, represented the division.

In response to questions by Co-Chair Roeding, Ms. Gilpatrick stated that the grant was for adults working toward a first baccalaureate degree because the goal was to bring adults back into an academic setting.

Co-Chair Roeding stated that he wished to be recorded as being opposed to this administrative regulation.

Teacher Scholarship Loan Program

11 KAR 8 030. Teacher scholarships.

In response to a question by Co-Chair Roeding, Ms. Gilpatrick stated that grant scholarship recipients signed a promissory note prior to distribution of funds and that repayment requirements were thoroughly explained to recipients.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, 6, 7, 8, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 8 040. Deferment of teacher scholarship repayment.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Osteopathic Medicine Scholarship Program

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

In response to a question by Co-Chair Roeding, Ms. Gilpatrick stated that it was the long-standing practice of the division to retain payments if a scholarship recipient did not initially meet the service obligation. This administrative regulation was amended by the agency to put that policy into an administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 14 060. Deferment of Osteopathic Medicine Scholarship Program repayment.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Commonwealth Merit Scholarship Program

11 KAR 15 090. Kentucky Educational Excellence Scholarship (KEES) Program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 6, 7, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Robert C. Byrd Honors Scholarship Program

11 KAR 16 010. Robert C. Byrd Honors Scholarship Program.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY DEPARTMENT OF VETERANS AFFAIRS: Office of the Commissioner: Recognitions


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A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend the Title and Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

REVENUE CABINET: General Administration
103 KAR 1.150. Electronic data match and levy procedures. Frank Dempsey, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Sections 1 and 3 to delete language that repeated or conflicted with statute. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board for Specialists in Hearing Instruments: Board
201 KAR 7:015. Fees. Gerald W. Hoppmann, Director of the Division of Occupations and Professions, and Charles R. Robinette, board member, represented the board.

In response to questions by Representative Lee, Mr. Robinette stated that all board-licensed specialists in hearing instruments had been notified of the proposed fee increases and that fees had not changed in approximately twenty (20) years, resulting in the board being in debt and behind on payments. He stated that administrative costs were increasing. He also stated that the board administrator was new and that the board otherwise would have made incremental changes, rather than doubling fees at once. Mr. Hoppmann stated that the board had recently had multiple challenges, including lawsuits, and the board wanted to be fiscally conservative.

In response to a question by Co-Chair Roeding, Mr. Robinette stated that fees in Tennessee were $310 and $400 yearly; that renewal fees in Tennessee, Ohio, Michigan, and Georgia had approximately a $100 difference from Kentucky renewal fees; and that Virginia had reduced fees. He stated that states bordering Kentucky had much higher fees than Kentucky.

Board of Barbering: Board

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1, 3, 4, and 5 to clarify record-keeping requirements. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Professional Engineers and Land Surveyors: Board
201 KAR 18.072. Experience. Jonathan Donan Buckley, general counsel, represented the board.

In response to questions by Senator Tapp, Mr. Buckley stated that the reason for these amendments was because other states did not recognize Kentucky’s reciprocity without post-graduate experience. He stated that most surrounding states had the same requirements and that Kentucky did not currently accept credit for a student cooperative program.

In response to a question by Co-Chair Roeding, Mr. Buckley stated that even during summertime, credit was not accepted for a student cooperative program and that six (6) months credit was required prior to taking the examination for licensure.

Co-Chair Roeding requested that Mr. Buckley investigate the board impediments to licensure potentially created by providing the exam six (6) months or more after graduation. Mr. Buckley stated that he would respond with the information to staff of the subcommittee.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to include a reference to the statutory requirement for licensure. Without objection, and with agreement of the agency, the amendments were approved.

Board of Chiropractic Examiners: Board
201 KAR 21.041. Licensing; standards; fees. Ryan Halloran, assistant attorney general, represented the board.

In response to a question by Co-Chair Roeding, Mr. Halloran stated that this amendment did not address fees, but changed requirements for continuing education hours.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Boxing and Wrestling Authority: Athletic Commission
201 KAR 27:100 & E. General requirements for amateur mixed martial arts shows. Larry Bond, Deputy Secretary of the Public Protection Cabinet and Acting Executive Director of the Kentucky Boxing and Wrestling Authority, and Angela Robertson, board administrator, represented the board.

In response to questions by Co-Chair Roeding, Mr. Bond stated that mixed martial arts had not been regulated at all in the past and that there had been multiple problems and injuries involved in this sport. He stated that the industry was a fairly new one to Kentucky and that industry representatives had asked for this administrative regulation. He also stated that the fee was to identify who was participating in amateur mixed martial arts shows, which he described as a very violent sport. Mr. Bond stated that other sports, such as boxing, were regulated by national associations, but that mixed martial arts did not have such a national regulating association to establish safety standards for participants.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 1, 2, 10, 38, 39, and 42 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 21 to prohibit weight gain in excess of: (a) six (6) pounds, instead of three (3) pounds, for a contestant who weighed in at 145 pounds or less; and (b) eight (8) pounds, instead of (4) pounds, for a contestant who weighed in at over 145 pounds. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Occupational Therapy: Board
201 KAR 28.090. Renewals. Gerald W. Hoppmann, Director of the Division of Occupations and Professions, and Kerry Wright Robertson, board member, represented the board.

Kentucky Board of Licensure for Private Investigators: Board
201 KAR 41:020. Application for licensure. Ryan Halloran, assistant attorney general; Mary Pedersen, board member; and Gerald W. Hoppmann, Director of the Division of Occupations and Professions, represented the board.
In response to a question by Representative Ford, Mr. Hoppmann stated that the FBI and Kentucky State Police performed the background checks. Ms. Pedersen stated that they conducted approximately 120 background checks per year.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 1 to clarify that the application for a license must be renewed; (3) to amend Section 2 to require a list of all private investigators employed by a private investigation company and a "proof of affiliation" letter for each private investigator in the company; (4) to insert two (2) new sections to provide procedures for change of contact information and to establish requirements related to application processing; (5) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (6) to update the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were adopted.

201 KAR 41:040. Fees.

In response to questions by Co-Chair Roeding, Mr. Hoppmann stated that the reinstatement fee was $100 and that the inactive status fee was paid yearly.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4 through 7, and 9 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with approval of the agency, the amendments were approved

201 KAR 41:060. Renewal and reinstatement procedures.

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 state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(1)(b); (3) to amend Sections 1 and 5 through 8 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT, FISCAL NOTE ON STATE OR LOCAL GOVERNMENT, and SUMMARY OF MATERIAL INCORPORATED BY REFERENCE; and (5) to revise the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:065. Inactive status.

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 state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(1)(f); and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:070. Continuing professional education requirements.

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 state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(1)(i); (3) to amend Sections 3 through 6, 11, and 12 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. Without objection, and with agreement of the agency, the amendments were approved.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Board of Emergency Medical Services: Board

202 KAR 7:030. Fees of the board. Charles M. O'Neal, executive director, and Lee Roland, Kentucky Community Technical and College System, represented the board. Dwayne Lee, director of Scott County EMS; Joe Pruitt, director of Nelson County EMS; and John Huchren, air medical industries, appeared in support of this administrative regulation. J. D. Chaney, director of government affairs for the Kentucky League of Cities; Tom Trott, director of legal affairs for the Kentucky Association of Counties; Ron Wolf, manager of Intergovernmental relations for Louisville Metro; and Ned Sheehy, director of government relations for Lexington-Fayette Urban County Government, appeared in opposition to this administrative regulation.

Mr. O'Neal stated that numerous EMS providers were present to support this administrative regulation. He stated that information relating to this administrative regulation was distributed across the EMS community. He also provided a spreadsheet with each fee increase for each licensure.

Co-Chair Damron stated his appreciation for EMS providers in Kentucky.

In response to a question by Co-Chair Roeding, Mr. Lee stated that he did not believe that these fee increases would discourage licensure of providers. He stated that the industry needed the oversight of the board in order to continue to provide effective quality of service to Kentuckians.

Mr. Pruitt supported the board and the fee increases. He stated that many other states funded EMT training as part of the fire service, but because Kentucky did not, the industry realized there would be costs for quality training and oversight.

Mr. Huchren stated that it had been a tough year for air medical industries because of crashes and fatalities. He stated that there were fifty-one (51) air ambulance helicopters currently serving Kentucky and that the board has developed training for safe landing and new protocols for air-to-ground communication. He also stated that, while he didn't want a fee increase, he supported the fee increase 100 percent because the industry needed a functioning board.

In response to questions by Co-Chair Roeding, Mr. O'Neal stated that the board currently licensed forty-eight (48) air ambulance helicopters under twenty-three (23) providers. He stated that the air ambulance fee was per license, not per helicopter. He also stated that the board used more General Funds that it retained to provide grants to local governments.

In response to a question by Senator Pendleton, Mr. O'Neal stated that the grants were to fund new ambulances, mechanical upgrades to ambulances, and safety equipment.

Mr. Wolf stated that the timing of the fee increase posed an obstacle for the City of Louisville because of the economic downturn and because the current fiscal year budget was unable to take these fee increases into account. He stated that he would like these fees to be deferred until Fiscal Year 2009.

Mr. Chaney apologized for the lateness of raising this issue and stated that Lexington, Louisville, and other cities would have problems funding these increased fees in the middle of Fiscal Year 2008.

Mr. Trott stated that, while the Kentucky Association of County Officials understood the need for these fees, local governments were unable to comply with those funding demands at this time. He expressed concern that fee increases were falling to local governments because of the economic downturn.

In response to questions by Co-Chair Damron, Mr. Wolf stated that the fiscal impact to Louisville would be $20,000 to $25,000. Mr. Sheehy stated that the fiscal impact to Lexington would be approximately $9,000 to $10,000.

Co-Chair Roeding expressed the importance that the cost-benefit analysis provided for by Regulatory Impact Analysis and Tiering Statement. Questions 4(a) through (c), be completed in enough detail to put the subcommittee on notice as to the needs of each agency and the benefit to the stakeholders. He stated that every agency needed to provide a meaningful response to these questions.
In response to a question by Senator Pendleton, Mr. Wolf stated that local governments billed the users of ambulance services but that, because of the economic downturn, it would be a difficult time to raise fees on users in order to compensate for the fee increases to local governments. He stated that fees were not divided equally in the comprehensive scheme.

Mr. O'Neal stated that grant money for the current fiscal year had not been allotted yet and that fees would not go into effect until the next fiscal year (because this year's fees had already been paid) so that cities and local governments could budget accordingly.

In response to a question by Co-Chair Roeding, Mr. O'Neal stated that $10,000 was the maximum grant allotment for each county. He stated that a city or local government had to fill out a one-page application describing how the grant would be spent and that, after a purchase, the receipt would be sent to the board as proof that the money was spent pursuant to the conditions of the grant.

In response to a question by Co-Chair Damron, Mr. Chaney, Mr. Troth, and Mr. Wolf stated that making the effective date for fees the next fiscal year, would assist cities in budgeting for and complying with these fee increases.

Co-Chair Roeding requested that local government brief Area Development Districts regarding the costs for budgeting.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, 6, 7, and 9 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 1:410).

Taking of fish by other than traditional fishing methods. Karen Alexander, Wildlife Division Director; Gerry Buynak, assistant director; Jon Gassett, commissioner; Jeff Ross, Acting Director of Fisheries; and Catherine York, deputy general counsel, represented the department.

In response to a question by Senator Pendleton, Mr. Gassett stated that recreational fishermen were required to take the first two (2) paddles of a fish that they shot with archery equipment.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to provide for the executive reorganization; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to state the necessity for and function served by this administrative regulation; (3) to amend Sections 1 and 3 through 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:015. Feeding of wildlife.

301 KAR 2:030. Commercial guide license.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 2 and 3 to extend the time to comply with certain requirements to January 1, 2010. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:227. Repeal of 301 KAR 2:223.

Wildlife

301 KAR 4.110. Administration of drugs to wildlife.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Abigail Powell, regulations coordinator, and Randy Payne, water quality contact, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct citations; and (2) to amend Section 1(60) to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

Division for Air Quality: Air Quality

401 KAR 52:081. Repeal of 401 KAR 52:080. Lora Gowsins, supervisor, represented the division.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 8:200. Comprehensive sex offender presentence evaluation procedure. Amy Barker, assistant general counsel, and James Van Nort, assistant director for the Division of Mental Health, represented the Office.

A motion was made and seconded to approve the following amendments to: (1) amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(1)(f); (2) amend Section 2 to add criteria for an appropriate actuarial instrument and to describe an "empirically-guided approach"; and (3) amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Kentucky State Police: Criminal History

502 KAR 30:001. Dissemination of criminal history record information. Keith Peery, major with the Kentucky State Police, and Morgain Sprague, legal counsel, represented the department.

In response to a question by Co-Chair Roeding, Ms. Sprague stated that the fee increase was insufficient to completely defray the cost of the program, but that the department was reluctant to raise the fee further at this time.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Section 1(2) to specify that: (a) employees and members of fire departments, ambulance services, and rescue squads shall be exempt from the fee pursuant to KRS 17.167(4); and (b) to specify that the fee required in this administrative regulation shall not apply to applications for a license, or renewal of a license, to carry a concealed deadly weapon; (3) to amend the Incorporation by Reference section to update forms; and (4) to amend Sections 1, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Criminal Justice Training: Kentucky Law Enforcement Council

503 KAR 1:110. Department of criminal justice training basic training: graduation requirements; records. Steve Lynn, assistant general counsel, represented the department.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5, 8, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Highways: Traffic
603 KAR 5:320. Safety in highway work zones. Dana Fugazzi, attorney, and Jeff Wolfe, Traffic Engineering Branch manager, represented the department.

In response to a question by Representative Ford, Mr. Wolfe stated that the administrative regulation would allow an engineer in the field to lower the speed limit in a construction area by up to fifteen (15) miles per hour (mph) on a highway with a speed limit of seventy (70) mph and by up to ten (10) mph on a highway with a speed limit of sixty-five (65) mph. He stated that workers had complained that the previous speed cap was not low enough under some circumstances. He also stated that the cabinet secretary was authorized to lower the speed limit below limits established in the administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to include KRS 174.080; 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.

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. Kevin Brown, general counsel; Michael Miller, division director; and Larry Stinson, associate commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Terms, Attendance and Operation
702 KAR 7:100 & E. Approval of innovative alternate school calendars.

In response to a question by Co-Chair Roeding, Mr. Stinson stated that this administrative regulation would make it easier for a school to request approval of an alternative school calendar.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 2 to establish the review criteria for submitted applications. Without objection, and with agreement of the agency, the amendments were approved.

Office of Instruction

In response to a question by Co-Chair Roeding, Mr. Miller stated that this administrative regulation allowed students to participate in both advance program (AP) and International Baccalaureate (IB) programs.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 2(2) to update the requirements of the precollege curriculum to match the curriculum established by the Council on Postsecondary Education in 13 KAR 2:020. Without objection, and with agreement of the agency, the amendments were approved.

Department for Workforce Investment: Unemployment Insurance
787 KAR 1:110. Appeals. Lisa Cochran, Unemployment Insurance Branch manager, and Larry W. Moore, policy analyst, represented the department.

In response to a question by Senator Pendleton, Ms. Cochran stated that, now that the department staffing levels had stabilized, great strides had been made toward speeding up the appeal process.

Co-Chair Roeding requested that the department keep subcommittee staff apprised of the progress in speeding up the appeal process.

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 Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Occupational Safety and Health
803 KAR 1:80. Recordkeeping: reporting; statistics. David Stumbo, health standards specialist, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

Ms. Clark introduced Mr. Chin and Mr. Shue, who were visitors from China working with International insurance issues.

806 KAR 2:092 & E. Disclosure of local government taxes.

In response to a question by Co-Chair Roeding, Ms. Clark stated that this administrative regulation required full disclosure on tax bills. Ms. Wasson stated that insurance billing notices were required to itemize local government taxes beginning December 31, 2008.

A motion was made and seconded to approve the following amendment: to amend Section (1)(3) to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

806 KAR 2:111. Repeal of 806 KAR 2:110.

Assets and Liabilities
806 KAR 6:130. Minimum standards for determining reserve liabilities and nonforfeiture values for preneed insurance.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend 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.

Agents, Consultants, Solicitors, and Adjusters
A motion was made and seconded to approve the following amendments: to amend Sections 5 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Life Insurance and Annuity Contracts
806 KAR 15.060 & E. Paid-up life insurance policies.
A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, 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.

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.
A motion was made and seconded to approve the following amendment: to delete an unnecessary definition in Section 1. Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need
In response to a question by Co-Chair Roeding, Ms. Banahan stated that the expenditure minimum had been raised each year.

Office of Inspector General: Division of Audits and Investigations: Office of Audits and Investigations
906 KAR 1:011. Repeal of 906 KAR 1:010. Stephanie Bramer-Barnes, regulation coordinator; Stephanie Hold, assistant director; and Michael Lawrence, department of inspector general, represented the office.
906 KAR 1:170. Administrative subpoenas.
In response to a question by Co-Chair Roeding, Mr. Lawrence stated that subpoenas were only intended as a last resort after other measures have proven unsuccessful.

Department for Medicaid Services: Medicaid Services
907 KAR 2:015. Payments for outpatient hospital services. Elizabeth A. Johnson, commissioner; Stuart Owen, regulation coordinator; and Neville Wise, finance director for Medicaid Services, represented the department.
Co-Chair Roeding stated his congratulations for working out the issues related to this administrative regulation.
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 Sections 2, 5, 6, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
907 KAR 1:025 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement.
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; (3) to amend Sections 1, 2, 4, 6, 8, 13, 14, 15, 17, 19, and 20 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 2 to revise Table 2, High Volume Adjustment Eligibility Criteria, to change the "days range" column and "per diem payment" column; (5) to amend Section 2 to: (a) specify that the department shall not make a high volume per diem payment for a level I neonatal care claim, or level II or III neonatal center claim, but that those claims shall be included in the hospital's high volume adjustment eligibility criteria calculation; and (b) clarify the reimbursement for neonatal care and non-neonatal care; (6) to amend Section 13 to establish the reimbursement rate for inpatient care provided by Vanderbilt Medical Center; and (7) to create a new section to specify that the department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272. Without objection, and with agreement of the agency, the amendments were approved.

Payment and services
907 KAR 3.205. Hemophilia treatment reimbursement and coverage via the 340B Drug Pricing Program.
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 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Child Support Enforcement: Child Support
921 KAR 1:350. Child support enforcement program application and interstate process. Steve Veno, deputy commissioner, represented the department.
The following administrative regulations were deferred to the December 9, 2008, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified
101 KAR 2.055 & E. Certification and selection of eligibles for appointment.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules
105 KAR 1:130. Hazardous duty coverage.
105 KAR 1:140 & E. Contribution reporting.
105 KAR 1:345 & E. Rollovers and transfers of contributions to other plans.
105 KAR 1:380 & E. Minimum distribution.

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GENERAL GOVERNMENT CABINET: Kentucky Real Estate Appraisers Board: Board
201 KAR 30.030. Types of appraisers required in federally-related transactions; certification and licensure.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.
301 KAR 2:300. Black bears.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Water Quality
401 KAR 5:010. Operation of wastewater systems by certified operators.

Water Quality Standards
401 KAR 10.028. Designation of uses of surface waters.
401 KAR 10.029. General provisions.
401 KAR 10.031. Surface water standards.

Certified Operators
401 KAR 11.001. Definitions for 401 KAR Chapter 11.
401 KAR 11.010. Board of certification.
401 KAR 11.020. Standards of professional conduct for certified operators.
401 KAR 11.030. Wastewater treatment and collection operators-classification and qualification.
401 KAR 11.060. Certification fees.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary
501 KAR 6.070. Probation and parole policies and procedures.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Commission
605 KAR 1:060. Temporary off-site sale or display event.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Terms, Attendance and Operation
702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

LABOR CABINET: Department of Workers' Claims: Workers' Claims
803 KAR 25:001 & E. Workers' compensation hospital fee schedule.

PUBLIC PROTECTION CABINET: 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.
810 KAR 1:015. Claiming races.
810 KAR 1:018 & E. Medication; testing procedures; prohibited practices.
810 KAR 1:028 & E. Disciplinary measures and penalties.

Harness Racing
811 KAR 1:090 & E. Medication; testing procedures; prohibited practices.
811 KAR 1:095 & E. Disciplinary measures and penalties.

The Subcommittee adjourned at 12:10 p.m. until December 9, 2008.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
(Meeting of November 12, 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 November 12, 2008, having been referred to the Committee on October 14, 2008, pursuant to KRS 13A.290(6):

301 KAR 1:201
401 KAR 5:057
401 KAR 50.066

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:

301 KAR 2:132

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 12, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at the Interim Joint Committee on Agriculture and Natural Resources, November 12, 2008)

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150 010, 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.178, 150.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish hunting seasons, regulate bag and possession limits, and determine the methods and devices used to take wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit organizations. KRS 150.178 authorizes the department to issue elk permits to landowners who enroll property for public hunting access KRS 150.390 authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, and procedures for elk damage abatement and any post-season hunt to be held after the quota hunts. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam which also counts as one (1) point.
(2) "Antlerless elk" means an elk without visible antler protruding above the hairline.
(3) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.
(4) "Elk" means Cervus elaphus nelsoni.
(5) "Elk Hunting Unit" or "EHU" means a designated area within the elk restoration zone possessing specific elk management restrictions.
(6) "Elk Management Unit" or "EMU" means a designated area within the elk restoration zone, possessing specific elk management restrictions during a post-season antlerless quota hunt.
(7) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for five (5) years.
(8) "Out-of-zone" means all counties not included in the restoration area.
(9) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk causing property damage by department personnel, the property owner, or another designated person. A person authorized to destroy an elk causing damage shall not:
(a) Move the elk until he has attached a disposal permit provided by the department to the carcass; and
(b) Remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk hunt application period shall be December 1 to April 30.
(2) A person shall apply for the elk quota hunt via the department's Web site[-the toll-free phone number listed in the current Kentucky Hunting and Trapping Guide, or a Kentucky license vendor]. The applicant shall provide the following information:
(a) The applicant's name, Social Security number, date of birth, and mailing address or phone number; and
(b) A nonrefundable application fee.
(3) An applicant shall not apply more than once per application period.
(4) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.
(5) There shall be a random electronic drawing.
(6) Two (2) permits, one (1) antlered and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons.
(7) An applicant who has not reached his or her sixteenth birthday by the last day of the application period shall be entered into the special youth drawing. An applicant not drawn for the special youth permits shall automatically be entered into the regular drawing.
(b) The application period and fee for the special youth draw shall be the same as the elk quota hunt application period set forth in subsection (1) of this section[that for the regular elk hunt].

(c) A special youth hunt permit shall be valid for the assigned EHU during seasons specified in Section 6 of this administrative regulation.

(7) No more than ten (10) percent of all drawn applicants shall be nonresidents.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per each 5,000 acres for each year of the agreement to a landowner cooperator.

(2) Recipients of landowner cooperator permits shall comply with the seasons, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3)(9) A landowner cooperator permit is transferable, but shall be used only on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) The landowner cooperator or person who has received a landowner cooperator permit shall provide the following information to the department before the transfer shall [shall provide the following information to the department about the transferred permit holder]:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4)(4) Public access agreements with the department shall be recorded in writing in Memorandum of Understanding.

(5) Recipients of landowner cooperator permits shall comply with the provisions of the administrative regulation.

Section 5. Hunter Requirements. (1) The statewide bag limit shall be one (1) elk per hunter per license year.

(2) A drawn applicant or a person who legally receives a landowner cooperator permit or a special commission permit issued pursuant to 311 KAR 3:100 may be accompanied by up to two (2) other individuals.

(3)(2) A drawn applicant shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(4)(3) An elk hunter or any person accompanying an elk hunter shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest pursuant to[per] 311 KAR 2:172.

(5)(4) An elk hunter shall not:
(a) Take elk except during daylight hours;
(b) Use dogs, except for leashed tracking dogs to recover wounded elk;
(c) Hunt over bait as defined in 311 KAR 3:010;
(d) Drive elk from outside the assigned EHU;
(e) Take swimming elk;
(f) Use electronic calls or electronic decoys; or
(g) Take an elk from a vehicle or boat or while on horseback. A disabled hunter who has a [disabled] hunting method exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(6)(6) An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.

(7)(6) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person’s firearm.

(8)(7) An adult accompanying a person under sixteen (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(9)(8) A hunter may use any firearm, archery equipment, or crossbow legal for hunting deer pursuant to 311 KAR 2:172, except an elk hunter shall not possess or use:

(a) Any weapon or device prohibited for deer hunting pursuant to 311 KAR 2:172;
(b) A modern firearm of less than 27 caliber;
(c) A muzzle-loading firearm of less than 50 caliber;
(d) A shotgun of less than 20 gauge;
(e) Any arrow without a broadhead point;
(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than 0.270 inches [.270 caliber][or-greater], and when fired, the bullet shall produce at least 550 fps of energy at 100 yards.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A hunter may use archery equipment:

(a) Beginning the first Saturday in October through the third Monday in January for antlered elk; and

(b) Beginning the second Saturday in October through the third Monday in January for antlerless elk.

(2) A hunter may use a modern firearm, muzzleloader, or crossbow:

(a) For seven (7) consecutive days beginning the first Saturday in October for antlered elk; and

(b) For fourteen (14) consecutive days beginning the second Saturday in December for antlerless elk.

(3) A hunter may use a crossbow for antlered or antlerless elk[or-sex sex]

(a) From the second Saturday in October through the end of the third full weekend in October; and

(b) From the second Saturday in November through December 31.

(4) The statewide season bag limit shall be one (1) elk per hunter.

(a) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(b) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only[antlered-only or antlerless only] quota hunts.

Section 7. EHU boundaries. EHU’s shall be designated as follows:

(1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to US Hwy 23. The boundary proceeds north following US Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on US Hwy 23, the boundary proceeds south to the intersection of US Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolf County line. The boundary then follows the county lines of Magoffin/Wolf County, Magoffin/Morgan County, and Johnson/Morgan County northeast to US Hwy 23, completing the boundary.

(3) EHU 3 - Starting at the intersection of US Hwy 23 and State Hwy 80, the boundary proceeds south following US Hwy 23 to the intersection of US Hwy 23 with the Kentucky/Virginia state line. The boundary then follows US Hwy 119 west to the intersection of US Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and US Hwy 23, completing the boundary.

(4) EHU 4 - Starting at the Breathitt/Wolf County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Cooperative County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Osage County, Perry/Osage County, Breathitt/Osage County, Breathitt/Lee County, and Breathitt/Wolf County northeast to State Hwy 15 at the Breathitt/Wolf County
line, completing the boundary.

(5) EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and US Hwy 119. The boundary then follows US Hwy 119 east to the intersection of US Hwy 19 and US Hwy 23. The boundary then follows US Hwy 23 south to the intersection of US Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southeast to the intersection of the state line with US Hwy 421. The boundary then follows US Hwy 421 north to the intersection of US Hwy 421 and State Hwy 68, then north along 68 to the intersection of 68 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(6) EHU 6 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with US Hwy 421. The boundary then proceeds south on 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

Section 6. Postseason Quota Hunt for Antlerless Elk on Private Land. (1) A modern firearms hunt for antlerless elk shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Hunters shall be randomly drawn from the pool of applicants who were not drawn for the quota hunt immediately preceding the postseason hunt.

(3) Drawn applicants shall comply with the requirements in Section 5 of this administrative regulation except that applicants may hunt only in the EMU to which they are assigned or on land they own within another EMU.

(4) EMUs shall be designated as follows:

(a) Knott County EMU - Starting at the intersection of State Hwys 7 and 899 south of Dena, the boundary then proceeds south along 899 to the intersection with State Hwy 160 near Brinkerly, then south on State Hwy 160 to the intersection of State Hwy 160 and State Hwy 882 near Littler, then east on State Hwy 882 to the intersection of State Hwys 882 and 7. The boundary then proceeds north from State Hwy 7 to the intersection with State Hwy 882, thus completing the boundary.

(b) Stony Fork EMU - Starting at the intersection of State Hwy 2058 and US Hwy 421 near Helton, the boundary then proceeds south along US Hwy 421 to the intersection with State Hwy 421 and US Hwy 119 near Haiman, then west along US Hwy 119 to the intersection of US Hwys 119 and US Hwy 25E. The boundary then proceeds north following US Hwy 25E to the intersection with State Hwy 68, then north on State Hwy 68 to the intersection of State Hwys 68 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spences Fire, then east on State Hwy 2058 back to US Hwy 421 at Helton, thus completing the boundary.

(5) Public hunting areas shall be closed to elk hunting during this season.

(6) The provisions of subsections (1) through (5) of this section shall no longer be in effect after 12:00 a.m., March 1, 2009.

Section 9[7]. Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record the species, sex, date, and county of kill on a hunter's log;

(2) Attach the tag portion of the permit to the carcass before moving the carcass; and

(3) Check the harvested elk by calling 800-245-4283 [the toll-free number listed in the current Kentucky Hunting and Trapping Guide] and recording the confirmation number on a hunter's log.

(4) If hunting in the elk zone during the elk quota hunts, attach a department-issued tag to the carcass before moving it.

Section 10[6]. Elk Hunting on Public Land. (1) A drawn applicant or recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA lie outside the restoration zone and are subject to the requirements established in Section 11[9] of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booyen WMA. (a) The archery and crossbow seasons shall be open as set forth in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk.

Section 11[6]. Out-of-zone Elk Hunting. (1) The method of taking and seasons established in 301 KAR 2:172 shall apply to taking elk outside of the restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter shall be a legal deer hunter and shall possess an out-of-zone elk permit.

(b) Landowners are exempt from this permit requirement as per KRS 150.170.

(2) Either sex elk may be taken and shall not count towards the deer bag limit.

(3) Elk harvested out-of-zone shall be telechecked in accordance with Section 9[7] of this administrative regulation.

Section 12[40]. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit. Approved by the Fish and Wildlife Commission June 13, 2008.

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext 4507, fax (502) 564-9136.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2006 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, nonsubstantive 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.
## 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:

(Note: Emergency regulations expire 160 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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**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.)

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* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register

(f) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.
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