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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet February 9, 2009 at 1 p.m. in room 149 Capitol Annex. See tentative agenda on pages 1703-1704 of this Administrative Register.
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, February 9, 2009, at 1:00 p.m., Room 149 Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
Commonwealth Merit Scholarship Program
11 KAR 15 090. Kentucky educational excellence scholarship (KEES) Program.

EDUCATION PROFESSIONAL STANDARDS BOARD
Board
16 KAR 6.010. Written examination prerequisites for teacher certifications.

PERSONNEL BOARD
Board
101 KAR 1.325. Probationary periods.

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
102 KAR 1.300. Kentucky Teachers' Retirement System Trustees Education Program.

Department of Revenue
Office of Sales and Excise Taxes
Sales and Use Tax; Registration and Collection.
103 KAR 25 111. Repeal of 103 KAR 25:110.
Sales and Use Tax; Miscellaneous Retailer Occupations
103 KAR 27:130. Printing and related industries.
Sales and Use Tax; Administration and Accounting
103 KAR 31:190. Alternate fuel, gasification, and renewable energy facility refunds on construction costs.

Kentucky Employees' Retirement System
Personnel
105 KAR 1.370. Kentucky retirement systems personnel policies.
105 KAR 1.440. Kentucky retirements systems trustee education program.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
Board
201 KAR 2.230. Special limited pharmacy - central refill pharmacy.
201 KAR 2.310. Compounding for a practitioner's office or institutional administration.
Kentucky State Board of Hairdressers and Cosmetologists

Board
201 KAR 12.105. School districts.

Kentucky Board of Veterinary Examiners

Board
201 KAR 16:015. Fees.

Board of Nursing

Board
201 KAR 20:400. Delegation of nursing tasks. (Deferred from January)

Board of Physical Therapy

201 KAR 22:051. Eligibility and credentialing procedure.
201 KAR 22 040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.

Board of Licensure Marriage and Family Therapists
Board
201 KAR 32:020. Equivalent course of study.
201 KAR 32:025. Marriage and family therapists associate.
201 KAR 32:030. Fees.
201 KAR 32:035. Supervision of marriage and family therapist associates.
201 KAR 32:070. Complaint procedure.

Dietitians and Nutritionists, Board of Licensure and Certification

Board
201 KAR 33:020. Renewals.

Board of Licensed Professional Counselors

Board
201 KAR 36.070. Education requirements.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 2:083 & E. Holding and intrastate transportation of captive cervids. ("E" expires 02/25/09) (Not Amended After Comments) (Deferred from December)
301 KAR 2:132. Elk depredation permits, landowner cooperators permits, and quota hunts.

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301 KAR 2.221 & E. Waterfowl seasons and limits. (*E* expires 5/20/09)
301 KAR 2.222 & E. Waterfowl hunting requirements. (*E* expires 5/20/09)

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection

Amusement Rides
302 KAR 16:090. Rides and attractions not included in the definition of amusement ride or attraction.
302 KAR 16:100. Operate amusement ride or device defined.
302 KAR 16:110. Violations, revocations, and suspensions of business identification number.
302 KAR 16:120. Inflatable rides or attractions.
302 KAR 16:130. Maintenance and repair amusement ride or attractions.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

Public Water Supply
401 KAR 8 010. Definitions for 401 KAR Chapter 8. (Deferred from January)
401 KAR 8 020. Public and semipublic water supplies; general provisions. (Deferred from January)
401 KAR 8 061. Repeal of 401 KAR 8:060, 8:162, 8:350, 8:400, and 8 420. (Deferred from January)
401 KAR 8 070. Public notification. (Deferred from January)
401 KAR 8 075. Consumer confidence reports. (Deferred from January)
401 KAR 8 150. Disinfection, filtration, and recycling. (Deferred from January)
401 KAR 8 220. Microbiological monitoring. (Deferred from January)
401 KAR 8 250. Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels. (Deferred from January)
401 KAR 8 300. Lead and copper. (Deferred from January)
401 KAR 8 510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors. (Not Amended After Comments)
401 KAR 8 550. Radionuclides. (Deferred from January)

Water Quality Standards
401 KAR 10:26. Designation of uses of surface waters. (Amended After Comments) (Deferred from October)
401 KAR 10:29. General provisions. (Amended After Comments) (Deferred from October)
401 KAR 10:30. Antidegradation policy implementation methodology. (Amended After Comments) (Deferred from October)
401 KAR 10:31. Surface water standards. (Amended After Comments) (Deferred from October)

New Source Standards
401 KAR 59:015. New indirect heat exchangers. (Amended After Comments)
401 KAR 59:017. Repeal of 401 KAR 59:016. (Not Amended After Comments)

Existing Source Standards
401 KAR 61:005 General provisions. (Amended After Comments)

JUSTICE AND PUBLIC SAFETY
Kentucky Law Enforcement Council

Council
503 KAR 1:140. Peace officer, telecommunicator, and court security officer: professional standards.

EDUCATION CABINET
Kentucky Board of Education
Department of Education

Board
702 KAR 3:090. Depository bond, penal sum.

EDUCATION AND WORKPLACE DEVELOPMENT CABINET
Department for Workforce Investment

General Admission
780 KAR 1:010. Kentucky state plan for career and technical education.

Management of the Kentucky TECH System
780 KAR 2:010. Administration of area technology centers.
780 KAR 2:050. Discipline of students.
780 KAR 2:110. Student medical and accident insurance.
780 KAR 2:140. Tuition and fees.

Personnel System for Certified and Equivalent Employees
780 KAR 3:010. Classification plan.
780 KAR 3:035. Employee evaluations.
780 KAR 3:040. Special appointments.

COUNCIL ON POSTSECONDARY EDUCATION

Council
785 KAR 1:010. GED Testing Program. (Not Amended After Comments) (Deferred from January)
Unemployment
787 KAR 1:090. Unemployed worker's reporting requirements. (Deferred from January)

LABOR CABINET

Department of Workers' Claims
803 KAR 25:091. Workers' compensation hospital fee schedule.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing

Division of Mining
805 KAR 5:030. Prohibition against working or traveling under an unsupported roof; penalties. (Deferred from January)
Miner Training, Education, and Certification
805 KAR 7:060. Program approval. (Deferred from January)
Office of Mine Safety and Licensing
805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises. (Amended After Comments) (Deferred from December)

PUBLIC PROTECTION CABINET
Department of Insurance

Administration
806 KAR 2:088. Verification of Risk Locations Systems.

Agents, Consultants, Solicitors, and Adjusters
806 KAR 9:070. Examinations.
806 KAR 9:310. Life settlement broker license and notification.
806 KAR 9:320. Life settlement provider license.

Life Insurance and Annuity Contracts
806 KAR 15:050. Reporting and general requirements for life settlement providers and brokers.

Health Insurance Contracts
806 KAR 17:083. Kentucky long-term care partnership insurance program.

Harness Racing
811 KAR 1:070 & E. Licensing standardbred racing. (*E* expires 5/2/2009) (Deferred from January)

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction

Manufactured Homes and Recreational Vehicles
815 KAR 25.080 & E. Requirements for certified installer seals and certification of manufactured home installers. (*E* expires 6/13/09)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives

Medicaid Services
907 KAR 1:170 & E. Reimbursement for home and community based waiver services. (*E* expires 5/31/09)
907 KAR 1:585. Estate recovery. (Amended After Comments)
907 KAR 1.645. Resource standards for Medicaid. (Deferred from January)
907 KAR 1.650. Trust and transferred resource requirements for Medicaid. (Deferred from January)
907 KAR 1.655. Spousal impoverishment and nursing facility requirements for Medicaid. (Deferred from January)

Department for Aging and Independent Living

Aging Services
910 KAR 1.240. Certification of assisted-living communities. (Not Amended After Comments)

Guardianship
910 KAR 2.020. Referral process for adult guardianship.
910 KAR 2.030. Accounting provisions for adult guardianship.
910 KAR 2.040. Service provisions for adult guardianship.
910 KAR 2.050. Compensation for guardianship program services.

Brain Injury
910 KAR 3:020. Behavioral services for individuals with brain injuries.

Department for Income Support
921 KAR 1.410. Child support collection and enforcement.
921 KAR 1.430. Child support administrative hearings.

Department for Community Based Services
Division for Family Support

K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP) (Amended After Comments)
921 KAR 2:017. Kentucky works supportive services. (Deferred from December)

Food Stamp Program
921 KAR 3:035. Certification process.
921 KAR 3:042. Food stamp employment and training program.
MOVED TO MARCH 2009 AGENDA DUE TO DEFERRAL OR RECEIPT OF COMMENTS

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
Board
201 KAR 5:120 & E. Practice of optometry outside of regular office for a charitable purpose. (*E* expires 6/9/09) (Comments Received, SOC ext.)

PUBLIC PROTECTION CABINET
Department of Insurance
Health Insurance Contracts
606 KAR 17:490. Uniform evaluation and reevaluation of providers. (Comments Received, SOC ext.)
Kentucky Horse Racing Commission
Thoroughbred Racing
810 KAR 1:025 & E. Licensing thoroughbred racing (*E* expires 5/30/2009)(Comments Received, SOC ext.)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Food and Cosmetics
902 KAR 45.005. Kentucky Food Code. (Comments Received, SOC ext.)
Payment and Services
907 KAR 3.210 & E. Acquired brain injury services long term care waiver and reimbursement. (*E* expires 6/6/2009) (Comments Received, SOC ext.)
Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

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

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

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

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
806 KAR 9:350, Recognition of financial planning certification and designation for receipt of fees and commissions.

RELATES TO: 292.330(1), 304.9-350
STATUTORY AUTHORITY: KRS 304.2-110, 304.9-350(8)
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 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 Counselor (Counselor) (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 Financial Consultant (CFC);
(10) Chartered Financial Consultant in Estate Planning (CFC/EP);
(11) Certified Investment Management Analyst (CIMA);
(12) Certified Investment Management Analyst (CIMA);
(13) Certified Public Accountant (CPA);
(14) Chartered Business Valuation Specialist (CBVS);
(15) Chartered Financial Analyst (CFA);
(16) Chartered Financial Consultant (CFC); 
(17) Chartered Financial Consultant in Estate Planning (CFC/EP);
(18) Chartered Life Underwriter (CLU);
(19) Chartered Trust and Estate Planner (CTEP);
(20) Certified Financial Planner (CFP);
(21) Certified Financial Planner (CFP);
(22) Certified Investment Management Analyst (CIMA);
(23) Certified Investment Management Analyst (CIMA);
(24) Certified Private Wealth Advisor (CPWA);
(25) Certified Retirement Planning Counselor (CRPC);
(26) Certified Retirement Plan Specialist (CRPS);
(27) Certified Trust and Estate Planner (CTEP);
(28) Certified Trust and Estate Planner (CTEP);
(29) Fellow, Financial Services Institute (FFSI);
(30) Fellow, the Life Management Institute (FLMI);
(31) Financial Services Specialist (FSS);
(32) Master Financial Advisor (MFA);
(33) Master Financial Manager (MFM);
(34) Master Financial Professional (MFP);
(35) Member of the Institute of Financial Services Professionals (MIFSP);
(36) Member of the Institute of Financial Services Professionals (MIFSP);
(37) Professional Financial Advisor (PFA);
(38) Qualified Plan Financial Consultant (QFPC);

Section 2. Nothing in this administrative regulation shall exemp 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 292.330(1) if the agent transacts business in this state as a broker-dealer, investment adviser, agent, or investment adviser representative.

SHARON CLARK, Commissioner
ROBERT VANCE, 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) 564-0868, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This 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 18, as enacted by the 2006 General Assembly.
(c) How this administrative regulation conforms to the content of the authorizing statute: 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.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation provides the listing of recognized financial planning certifications and designations that would allow an individual to qualify for an exemption to KRS 304.9-350 and, therefore, 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.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This 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 statute: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statute: This is a new administrative regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 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) 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 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.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(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.
STATEMENT OF EMERGENCY
101 KAR 2:066E

This emergency amendment codifies and ensures that all agencies in the Executive Branch will immediately implement Veterans' Preference, as provided in KRS 18A.150, to provide an additional five (5) points to a veteran's selection method score. However, the Personnel Cabinet, in conjunction with all hiring agencies, has moved away from the testing selection method and there currently are no state merit positions which utilize the testing selection method at this time. The testing selection method may be utilized in the future where warranted and has not been entirely eliminated. Therefore, it is necessary to immediately provide the manner by which veterans' preference will be awarded for non-tested positions. This emergency amendment is necessary to ensure that veterans and their families continue to receive the preference they have earned through their dedicated military service and sacrifice, and the emergency regulation must be put into effect immediately. Further, this emergency amendment is necessary to comply with the spirit and intent of KRS 18A.150. An ordinary amendment to the administrative regulation is not sufficient as there is an immediate need for agencies to comply and implement the system of Veterans' Preference. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the regulations compiler on January 8, 2009.

STEVEN L. BESHEAR, Governor
NIKKI JACKSON, Secretary
DINAH T. BEVINGTON, Acting Executive Director

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:066E. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.150.
18A.155

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b),
(7)

EFFECTIVE DATE: January 9, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligibles for appointment.

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion, or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:

(1) Be for one (1) or more positions in the same:
(a) Class; or
(b) County;
(2) Indicate:
(a) The number and identity of the positions to be filled;
(b) The title of the job classification for each position; and
(c) Other pertinent information which the appointing authority and the secretary deem necessary; and
(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.

(a) If one (1) position is involved, the secretary shall certify the names of:
1. Each applicant who:
   a (44) Applied for the vacant position; and
   b (45) If it is a tested position, has a score in the highest five (5) scores earned through the selection method; and
2. All internal mobility candidates who are eligible and have applied for the vacant position.
   b. If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.
   c. Each appointment shall be made from:
1. The (internal mobility candidate) listing of eligible applicants who have applied for the vacant position; or
2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable.
   d. The eligible with the five (5) highest scores who have applied for the vacant position, if applicable.
   e. The life of a certificate during which action may be taken shall be ninety (90) days after the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Veterans' Preference. (1) The following individuals shall qualify for Veterans' Preference once a discharge certificate is submitted to the secretary which verifies honorable service and, if applicable, verifies a service-connected disability:
(a) Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge;
(b) Any current member of the active military, military reserves, or National Guard;
(c) The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
1. Was discharged or released with an Honorable Discharge; and
2. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed;
3. The spouse of a veteran with a service-connected disability shall be entitled to Veterans' Preference until the date the disabled veteran recovers;
(d) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and if the veteran:
1. Lost his or her life under honorable conditions while on active duty or for active duty for training purposes or
2. Became permanently and totally disabled as a result of a disability sustained during the veteran's service, or
(e) The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with a Dishonorable Discharge, including the surviving spouse of any military personnel who died while serving in the military;
1. The surviving spouse shall be entitled to Veterans' Preference until the date of remarriage.
2. The surviving spouse shall not be entitled to Veterans' Preference if circumstances surrounding the death of the veteran while in the Armed Forces would have been cause for a Dishonorable Discharge.
(2) For all tested classified positions, Veterans' Preference shall be awarded by providing additional points to the entrance examination scores, once the secretary has determined the score is a passing score and has verified the required service.
(a) The following individuals shall receive five (5) additional points on entrance examination scores, but not exceeding 100 total points:
1. Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge, or
2. Any current member of the active military, military reserves,
or National Guard.

(b) The following individuals shall receive ten (10) additional points on entrance examination scores, but not exceeding 100 total points:

1. The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
   a. Was discharged or released with an Honorable Discharge; and
   b. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed.

2. A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and is not eligible for Veterans' Preference if:
   a. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
   b. Became permanently and totally disabled as a result of a disability sustained during the veteran's service; or

3. The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge.

(3) For all nontested classified positions, Veterans' Preference shall be awarded by the following:

(a) Upon receipt of a request for a register, the secretary shall submit to the appointing authority the register certificate which lists all eligible applicants who meet the minimum requirements for the position. The certificate shall identify the names of eligible veterans, including career, mobility candidates, who have applied for the position and are entitled to Veterans' Preference.

(b) The appointing authority shall offer an interview to at least five (5) of the individuals listed on the register certificate who qualify for Veterans' Preference and may offer an interview to additional candidates on the register certificate who do not qualify for Veterans' Preference.

(c) If there are fewer than five (5) individuals listed on the register certificate who qualify for Veterans' Preference, the appointing authority shall offer an interview to all individuals listed on the register certificate who qualify for Veterans' Preference.

(d) If an individual entitled to Veterans' Preference has been interviewed for a job vacancy in the same classification, the same work county, and by the same appointing authority within the preceding six (6) months, the agency shall not be required to offer that individual another interview.

Section 4. Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

(2) The appointing authority may identify preferred skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may request that an applicant answer those preferred skills questions when submitting an Application for Employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions as a factor in applicant selection.

Section 5[1-] Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 9, 2009 at 3 p.m.
CONTACT PERSON: Dinah Bavington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bavington
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes the requirements for certification and selection of eligibles for appointment.
   (b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper certification and selection of eligible applicants for appointment to state positions.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 15A and 18A.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the requirements for certification and selection of eligibles for appointment.

(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 supplements the system of Veterans' Preference in state hiring and includes the manner to award preference for nontested, qualifying positions. The amendment is necessary to ensure that veterans and certain family members are rewarded for hardship endured and to recognize the economic loss suffered while serving our Nation in uniform.
   (b) The necessity of the amendment to this administrative regulation: The emergency amendment to this administrative regulation is necessary to provide preference for nontested, qualifying positions, which does not currently exist. The practice of providing veterans an additional opportunity to be interviewed and considered for state employment should be promoted and adhered to by all agencies. This amendment must be codified to supplement KRS 18A.150, which is the statutory authority currently in place for implementation of a system of Veterans' Preference.
   (c) How the amendment will assist in the effective administration of the statutes: The amendment will provide the guidelines by which the Personnel Cabinet shall clearly identify and supply to employing agencies and cabinets the individuals who are entitled to receive Veterans' Preference, as well as codify the process by which Veterans' Preference will be implemented in state hiring. This clarifies the process by which KRS 18A.150 will be effectuated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Veteran applicants for state employment, the Personnel Cabinet and all Executive Branch agencies are affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if 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: Veteran applicants are required to submit documentation which verifies their veteran status. The Personnel Cabinet is responsible for notifying the appointing authority of an individual who is entitled to Veterans' Preference, and shall indicate this qualification on the register certificate. Employing agencies are required to then offer an interview to a set number of individuals who are entitled to receive Veterans' Preference.
   (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 additional cost to each of the entities identified in question (3).
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is proper and fitting that the Commonwealth of Kentucky assist those who forfended their career opportunities and suffered economic loss while providing military service. Kentucky will be encouraging the practice of hiring veterans and employing veterans in the state workforce, which is beneficial for the Commonwealth as well as the individual veterans.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: This regulation, as amended, is not anticipated to
generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 13A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2), 18A.110(1)(B) and (7), and 18A.150.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year. The administrative regulation is to be in effect:
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? There are no estimated additional costs to administer the Veterans’ Preference program.
   (d) How much will it cost to administer this program for subsequent years? There is no estimated cost in the administration of the Veterans’ Preference program.

STATEMENT OF EMERGENCY

103 KAR 3:040E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representative to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to make timely and accurate filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor

THOMAS B. MILLER, Commissioner
(7) Revenue Form 41A720CELL, *Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol*, shall be used by a taxpayer who is a producer of cellulosic ethanol to report the number of cellulosic ethanol gallons and request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.4244.

(8) Revenue Form 41A720C, *Schedule CI, Application for Coal Incentive Tax Credit*, shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(9)[29] Revenue Form 41A720CR, *Schedule CR, Pro Forma Federal Consolidated Return Schedule*, shall be used by a corporation filing a consolidated return to show its federal pro forma consolidated return.

(10)[8] Revenue Form 41A720CR-C, *Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet*, shall be used by a corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

(11)[9] Revenue Form 41A720ES, *Form 720-ES[720-ES], 2000[2008] Kentucky Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher*, shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity taxes as required by KRS 141.044.

(12) Revenue Form 41A720ETH, *Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol*, shall be used by a taxpayer to request ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.4242.

(13)[16] Revenue Form 41A720EZC, *Schedule EZC, Enterprise Zone Tax Credit*, shall be used by a qualified taxpayer to determine the allowable credits. [enter zone tax credit allowed by KRS 145.45-005]

(14)[11] Revenue Form 41A720HH, *Schedule HH, Kentucky Housing for Homeless Families Deduction*, shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.


(16)[10] Revenue Form 41A720KCR, *Schedule KCR, Kentucky Consolidated Return Schedule*, shall be used by a corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

(17)[23] Revenue Form 41A720KCR-C, *Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet*, shall be used by a corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(18)[13] Revenue Form 41A720LLET, *Schedule LLET, Limited Liability Entity Tax*, shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(19)[32] Revenue Form 41A720LLET-C, *Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2000)*, shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership (or formed as a general partnership after January 1, 2006, or a corporation or limited liability pass-through entity that is a member or partner in another limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720[00]) to determine the limited liability entity tax.

(20)[17] Revenue Form 41A720LLET(K), *Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Projects)*, shall be used by limited liability pass-through entities with economic development projects to determine the limited liability entity tax.

(21)[49] Revenue Form 41A720LLET(K)-C, *Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet For a limited liability pass-through entity with economic development projects: subject to this limited liability entity tax that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2000*, shall be used by a limited liability pass-through entity with an economic development project that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET(K) (entities that are partners, members, or shareholders in another limited liability pass-through entity with an economic development project that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006 or a limited liability pass-through entity with an economic development project that is a member or partner in another limited liability pass-through entity doing business both within and without this state).

(22)[48] Revenue Form 41A720NOL, *Schedule NOL, Net Operating Loss Schedule*, shall be used by a corporation with a current year net operating loss or net operating loss carry-forward.

(23)[20] Revenue Form 41A720NOL-CF, *Schedule NOL-CF, Kentucky NOL Carry forward Schedule*, shall be used by a corporation filing an effective or nexus/consolidated income tax return (as provided by KRS 141.320). In addition to Revenue Form 41A720NOL (under the Line 5800 - Carry forward [Revenue Form 41A720]), to show the Kentucky net operating loss (NOL) carry forward balance for each member of the affiliated group.

(24) Revenue Form 41A720-O, *Schedule O-720, Other Additions and Subtractions To/from Federal Taxable Income*, shall be used by a corporation filing Kentucky Form 720 to show other additions and subtractions to the Federal income tax return.

(25)[21] Revenue Form 41A720Q, *Schedule Q, Qualified Research Facility Tax Credit*, shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.330.

(26)[24] Revenue Form 41A720RC, *Schedule RC, Application for Income Tax/LLET Credit for Recycling and/ or Composting Equipment or Major Recycling Project*, shall be used by a taxpayer to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit claimed on their income tax return.

(27)[26] Revenue Form 41A720RC-C(41A720RC(C)), *Schedule RC-C, Schedule RC - Part I Continuation*, shall be used by an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(28)[24] Revenue Form 41A720RC(W), *Instructions for Schedule RC*, shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval of a tax credit for recycling and/ or composting equipment, or a major recycling project.

(29)[18] Revenue Form 41A720RC-R, *Schedule RC-R, Kentucky Disposition of Recycling or Composting Equipment Schedule*, shall be used by a taxpayer disposing of recycling or composting equipment before the end of the recapture period to compute the tax credit recaptured to be reported on the applicable tax return.

(30)[80] Revenue Form 41A720W5F, *Form 720S, 2008[2007] Kentucky S Corporation Income Tax and LLET Return*, shall be used by a limited liability pass-through entity with an economic development project to determine the amount of [corporation-income] tax due in accordance with KRS 141.0401 and 141.0401 to report the shareholders' share of income, loss, credits, deductions, etc. for tax years beginning in 2008[2007].

Revenue Form 41A720S(K), "Form 7205(K), Kentucky Schedule K for S Corporations With Economic Development Projects(s)", shall be used by S Corporations with economic development projects to determine the shareholders' shares of income, credit, deductions, etc., excluding the economic development projects.

Revenue Form 41A720S(K-1), "Schedule K-1 (Form 7205), 2008[2007] Shareholder's Share of Income, Credit, Deductions, Etc.", shall be used by S Corporations to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a pass-through entity filing Revenue Form 41A720S, or Form 42A765-GP to show other additions to and subtractions from federal ordinary income on Revenue Form 41A720S, or Form 42A765G-P Part I, Line 5 and 9, respectively.

Instructions shall be included on the back of the form to assist the shareholder in preparing their Kentucky individual income tax return.

Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a corporation return or an income and LLET return.

Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits claimed and shall be attached to the tax return.

Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit (Brownfield)", shall be used by an entity claiming a tax credit provided by KRS 141.418.

Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.

Revenue Form 41A720-S2[4A726AM], "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

Revenue Form 41A720-S3[4A724AMEND], "Form 720-AMENDED (2007-2008)", Amended Kentucky Corporation Income Tax and LLET Return, shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2007, as previously filed.

Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated Kentucky income tax return on Revenue Form 41A720 to identify the members of the affiliated group which are subject to the Kentucky corporation tax and to list the amount of tax paid.

Revenue Form 41A720X, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2006, as previously filed.

Revenue Form 41A720-S5[4A720-S4], "Form 2200-K, Uncertainty of Estimated Income Tax By Corporations", shall be used by a corporation to document that it meets the exception to the estimated tax underpayment penalty, if its prior year tax liability was equal to or less than $25,000 and estimated tax equals or exceeds the prior year tax as provided by KRS 141.042 and KRS 141.990, or to compute its underpayment penalty.

Revenue Form 41A720-S4, "Instructions for Filing Corporation Income/Limited Liability Entity Estimated Tax Voucher", shall include instructions used by a corporation or a limited liability pass-through entity to determine the amount of estimated corporation income tax or limited liability entity tax that is due to be paid in accordance with KRS 141.403.

Revenue Form 41A720-S6[41A720-S8], "Form 8503-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For KREDA Project of Corporations)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against [the] Kentucky corporation income tax liability and [the] limited liability entity tax liability in accordance with KRS 141.347.

Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Credit Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against [the] Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of Corporations)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against [the] Kentucky corporation income tax liability and [the] limited liability entity tax liability in accordance with KRS 141.404.

Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Credit Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against [the] Kentucky income tax liability and [the] limited liability entity tax liability in accordance with KRS 141.404.

Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of Corporations)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against [the] Kentucky corporation income tax liability and [the] limited liability entity tax liability in accordance with KRS 141.403.

Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a company which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Credit Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against [the] Kentucky income tax liability and [the] limited liability entity tax liability in accordance with KRS 141.403.

Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of Corporations)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against [the] Kentucky corporation income tax liability and [the] limited liability entity tax liability in accordance with KRS 141.407.
prior to the date prescribed by law for filing a return to request a six
(6) month extension to file the return or to remit payment of tax
prior to the date the return is due.

(4) Revenue Form 40A200 [PTE-WH], [Form PTE-WH, "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income", shall be used by a pass-through entity doing business in
Kentucky to report Kentucky income tax withheld on each nonresident individual or corporate partner doing business in
Kentucky only through its ownership interest in the pass-through entity.
(5) Revenue Form 40A201 [740 NP-WH], "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual and corporate partners.

(6) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(7) Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms used for withholding and reporting Kentucky income tax withholding.

(8) Revenue Form 42A008(1), "2009[2008] Withholding Tax Tables Computer Formula", shall be used by an employer for computing employees Kentucky income tax withholding each pay
period.

(9) Revenue Form 42A740, "Form 740, 2009[2007] Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in 2008[2007], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(10) Revenue Form 42A740-A, "Schedule A, Form 740, 2002[2007] Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for 2002[2007].


(12) Revenue Form 42A740-EZ, "Form 740-EZ, 2009[2007] Kentucky Individual Income Tax Tax Return for Single Persons with No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in 2007, and shall be due within three and one-half (3 1/2) months after the close of the taxable year.


(14) Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(15) Revenue Form 42A740-KNOIL, [Form 42A740-KNOIL, "Schedule KNOIL, 2009[2008] Kentucky Net Operating Loss Schedule", shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(16) Revenue Form 42A740-M, [Schedule M, 2008[2007] Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(17) Revenue Form 42A740-NT, [Form 740-NT, 2009[2008] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in 2008[2007], and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(18) Revenue Form 42A740-NT-A, [Schedule A, Form 740-NT, 2008[2007] Kentucky Schedule A Itemized Deductions", shall be completed and attached to Form 42A740-NT by part-year or full-year nonresidents to support the itemized deductions claimed for 2008[2007].


(20) Revenue Form 42A740-NP[1], [Form 42A740-NP[1], "Instructions for 2008[2007] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", shall be used by nonresident or part-year resident individuals to file the 2008[2007] Kentucky Form 740-NP and related schedules.


(22) Revenue Form 42A740-NP-R, [Form 42A740-NP-R, 2008[2007] Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to the nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2008[2007].

(23) Revenue Form 42A740[PKT], [Form 42A740[PKT], 2008[2007] Kentucky Individual Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(24) Revenue Form 42A740-PR, [Schedule P, Form 740, 2008[2007] Kentucky Pension Income Exclusion", shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2008[2007].

(25) Revenue Form 42A740-UTC, [Form 42A740-UTC, "Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.


(27) Revenue Form 42A740-XP, [Form 42A740-XP, Kentucky Individual Income Tax Return, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(28) Revenue Form 42A740-S1, [Form 42A740-S1, "Form 2210-K, 2008[2007] Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in 2008[2007].

(29) Revenue Form 42A740-S4, [Form 42A740-S4, 2008[2008] Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for 2009[2008].

(30) Revenue Form 42A740-S18, [Form 42A740-S18, Kentucky Passive Activity Loss Limitations", shall be completed by an individual taxpayer and attached to the individual tax return in support of an allowable passive loss deduction and carryover of a passive activity loss.

(31) Revenue Form 42A740-S21, [Form 42A740-S21, "Form 4922-K, 2008[2007] Kentucky Tax on Lump-Sum Distributions", shall be completed by an individual taxpayer to compute tax liability on a lump sum distribution and attach to their individual income tax return.

(32) Revenue Form 42A740-S22, [Form 42A740-S22, 2008[2007] Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(33) Revenue Form 42A740-S23, [Form 42A740-S23, 2008[2007] Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(34) Revenue Form 42A740-S24, "Form 8863-K, 2008[2007] Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on their individual Kentucky income tax return.

(35) Revenue Form 42A741, "Form 741, 2008[2007] Kentucky
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Fiduciary Income Tax Return*, shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.

(36) Revenue Form 42A741-D, “Schedule D, Form 741, 2007 Kentucky Capital Gains and Losses”, shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(37) Revenue Form 42A741(f), “Instructions - Form 741, Kentucky Fiduciary Income Tax Return”, shall be the instruction guide provided by the Department of Revenue for completing the 2008/2009 Form 741.

(38) Revenue Form 42A741(K-1), “Schedule K-1, Form 741, 2008/2009” Kentucky Beneficiary’s Share of Income, Distributions, Credits, etc., shall be filed by the fiduciary with Form 741 to report each beneficiary’s share of income, deductions, and credits.

(39) Revenue Form 42A765-GP, “Form 765-GP, 2008/2009” Kentucky General Partnership Income Return”, shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2008/2009.

(40) Revenue Form 42A765-GP(f), “Instructions, 2008/2009” Kentucky General Partnership Income Return”, shall be provided to assist the general partnership in completing a general partnership income return.

(41) Revenue Form 765-GP(K-1), “(Kentucky) Schedule K-1, Form 765-GP, 2008/2009” Partner’s Share of Income, Credits, Distributions, etc., shall be filed by the general partnership with Form 765-GP to report each general partner’s share of income, deductions, and credits.

(42) [Revenue Form 766-GP(P), 2007 Kentucky General Partnership Income Return Forms and instructions], shall provide in a single packet Form 766-GP, 2007 Kentucky General Partnership Income Return, often commonly used by general partnerships in conjunction with Form 765-GP and instructions for filing these forms. This packet shall also contain a brochure entitled “Your Right as a Kentucky Taxpayer.”

(43) Revenue Form 42A765-GP(K), “Form 765-GP(K) 2008/2007” Kentucky Schedule K for General Partnerships with Economic Development Projects(d), shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners’ share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.

(44) Revenue Form 42A801, “Form K-1, Kentucky Employer’s Income Tax Withheld Worksheet”, shall be used by employers to report wages and taxes withheld for the filing period.

(45) Revenue Form 42A804, “Form K-4, Kentucky Department of Revenue Employee’s Withholding Exemption Certificate”, shall be used by an employee to report the number of exemptions claimed in order to determine the amount of Kentucky tax withheld from wages each pay period.

(51) Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(52) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employers to inform employers of special tax exempt status.

(53) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(54) Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(55) Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(56) Revenue Form 42A809, "Certificate of Nonresidence", shall be used by employers to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(57) Revenue Form 42A810, "Nonresident’s Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency.

(58) Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(59) Revenue Form 42A812, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(60) Revenue Form 42A813, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(61) Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(62) Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(63) Revenue Form 42A817, "Order Form", shall be used by employers to order wage and tax statements.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Corporation income taxes - referenced material:
2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass through entities taxable both within and without Kentucky)", October, 2008/2007;

3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass through entity/corporations and pass-through entities) taxable both within and without Kentucky that is also a partner or member of a limited liability pass through entity or general partnership or (Kentucky taxable in another state)", October, 2008/2007;
7. Revenue Form 41A720CELL, "Schedule CELL, Application
43. Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Projects(*), October, 2008[2007].
45. Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", April, 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner
APPROVED BY LRC: January 14, 2009
FILED WITH LRC: January 15, 2009 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Devon Hankins
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the forms to be used when reporting or estimating corporation tax, reporting or estimating limited liability entity tax, reporting or estimating individual tax, or withholding individual income tax for tax years beginning in 2008.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers necessary tax forms for reporting and paying their corporation, limited liability entity, individual, and withholding taxes for tax years beginning in 2008.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating forms by reference.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes forms to be used by taxpayers to report and pay corporation taxes, limited liability entity taxes, individual income taxes, and withholding taxes to the Commonwealth of Kentucky pursuant to KRS Chapter 141.
(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 tax forms to be used for tax years beginning in 2008.
(b) The necessity of the amendment to this administrative regulation. This amendment is necessary to update tax forms to the current tax laws in effect for years beginning in 2008.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay income taxes, limited liability entity taxes, and individual withholding taxes for tax years beginning in 2008.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individual, pass-through entity, and corporate tax filers are 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: Individual, pass-through entity, and corporate tax filers will use the forms contained in this administrative regulation to report, pay, and withhold taxes due pursuant to KRS Chapter 141 for tax years beginning in 2008.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of filing tax returns contained in this administrative regulation with the Commonwealth of Kentucky should be comparable to filing tax returns with surrounding states.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The forms contained in this administrative regulation should simplify and expedite the reporting and paying of taxes required by KRS Chapter 141.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The cost of printing and designing the forms.
(b) On a continuing basis: Forms are updated each year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This
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administrative does not establish any fees or directly or indirectly increase any fees.

9) TIERING: Is tiering applied? Tiering is not applied as the forms included in this administrative regulation apply to all taxpayers taxed pursuant to KRS Chapter 141.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 151.130(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase revenues or expenses for the Commonwealth, but will expedite the collection of taxes provided by KRS Chapter 141.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

505 KAR 1:100E

This emergency administrative regulation is being promulgated in order to implement a revised classification system for use by the Department of Juvenile Justice, in conjunction with the classification manual which was previously incorporated by reference in 505 KAR 1:100. KRS 13A.190(1)(a)(3) provides that an emergency regulation is one (1) that must meet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation. The proposed administrative action must be taken on an emergency basis because the Department of Juvenile Justice has a compelling and immediate obligation to institute a classification system that valid under state law. Portions of the current classification system implemented through 505 KAR 1:100 were voided and invalidated by the Franklin Circuit Court in the case of Peterson 1, et al. v. Payne, et al., 05-Cl-01734. As such, the Department of Juvenile Justice through this emergency administrative regulation seeks to make its classification system consistent with the requirements of the Juvenile Code under state law. The ordinary administrative regulation is identical to this emergency administrative regulation and is being filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
J. MICHAEL BROWN, Secretary
J. RONALD HAWS, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Placement Services
(Emergency Amendment)

505 KAR 1:100E. Department of Juvenile Justice Policies and Procedures: admissions.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.230
EFFECTIVE: January 15, 2009
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into the regulations form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", January 15, 2009(April 15, 2009), which includes the following:

200 Classification (Amended 1/15/09/04/13/06)

201.1 Day Treatment Admissions (Amended
1/15/09/04/13/06)

202 Waiting List (Amended 201.1/15/09/04/13/06)

204 Daily Census and Population (Amended
1/15/09/04/13/06)

206 Administrative Transfers (Amended 1/15/09/04/13/06)

208 Youth Rights/Orientation (Amended
1/15/09/04/13/06)

209 Youth Access to Outside Investigative Agencies (Amended
1/15/09/04/13/06)

210 Interstate Referrals (Amended 1/15/09/04/13/06)

211 Interstate Runaways, Escapes and Absconders (Amended
1/15/09/04/13/06)

212 Interstate[Out-of-State] Purchase of Care (Amended
1/15/09/04/13/06)

213 Interstate Travel (Amended 1/15/09/04/13/06)

214 Interstate Revocations and Case Closure (Amended
1/15/09/04/13/06)

217 [Amended/Advance] Care Unit (Amended
1/15/09/04/13/06)

(b) The "Classification and Placement[Assessment] Manual", 1/15/09/04/13/06;

(c) The "Youth Level of Service/Case Management Inventory (YLS/CM), User's Manual", 01/13/06;

(d) The "Child and Adolescent Service Intensity Instrument (CASII)" also known as "Child and Adolescent Level of Care Utilization System(CALOCUS)", 01/13/06;

(e) The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERASOR)", 01/13/06;

(f) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner
APPROVED BY AGENCY: January 13, 2009
FILED WITH LRPC: January 16, 2009 at 10 a.m.
CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2736, fax (502) 573-0836.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: LaDonna Koebel, Staff Attorney

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees and the residential and community populations.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the administration of the Department of Juvenile Justice.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential and community population as to their duties, rights, privileges, and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance with ACA Standards and show actual practice of the agency.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.
(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,460 employees of the residential programs, Approximately 2,267 youth in all programs, all visitors and volunteers to Department of Juvenile Justice facilities.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of the administrative regulation, if new, or by the change if it is an amendment:
(a) Youth are placed in the least restrictive alternative setting, and to provide a clearer understanding of the policies and procedures by employees and residents, thereby impacting the security and safety of the agency and the public.
(b) Provide an estimate of how much it will cost to implement this administrative regulation:
(i) Initial: $1,000
(ii) On a continuing basis: $500
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2006 - 2010 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases fees: None

(9) TIERING: Is Tiering applied? No. Tiering was not appropriate to 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 question 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 the Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY

811 KAR 2:120E

KRS 230.804 establishes the Kentucky Horse Breeds' Incentive Fund (KHBIF). At present, eleven (11) state nonrace breed affiliates are registered with the Fund. Registration with the fund is for a three (3) year period, and the next registration period closes on December 31, 2008. The amendments to this regulation are intended to maintain the integrity of the KHBIF by ensuring that state affiliates participating in the Fund utilize closed breed registries instead of open breed registries. An open breed registry is one in which a new horse can be registered with the breed even if the horse's dam and sire were not members of the breed. In the present context, permitting the use of open breed registries encourages affiliates to add horses to the breed (and thereby increase the percentage payout under the Fund to the affiliate) without necessarily preserving the quality of the breed. Use of a closed breed registry restricts the number of horses which can be registered with the breed, and ensures that registered horses are purebred members of the breed. Further, the amendments revise the disciplinary procedures available to the Commission by permitting the Commission to penalize individuals who participate in the Fund in various ways, without necessarily penalizing the state affiliate as a whole. It is necessary to enact these amendments to the regulation prior to January 1, 2009, so that participating affiliates will have notice of the amendments at the time of registration with the Fund, and so that affiliates applying for the Fund may be evaluated under the amended regulation. This will assist in protecting the integrity of the Fund, which in turn supports and encourages the horse breeding industry, an important part of Kentucky's environment and economy. An ordinary regulation could not go into effect prior to January 1, 2009. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed concurrently with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
LARRY R. BOND, Deputy Secretary
ROBERT M. BECK, Jr., Chairman

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Breeders' Incentives
(Emergency Amendment)

811 KAR 2:120E. Kentucky Horse Breeds' Incentive Fund.


STATUTORY AUTHORITY: KRS 230.804(2)(b), EO 2008-658

EFFECTIVE: December 31, 2006

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.804 establishes the Kentucky Horse Breeds' Incentive Fund. KRS 230.804(2)(b) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. EO 2008-658, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to Commission. The administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions. (1) "Applicant" means a Kentucky affiliate representing a breed of horses which is eligible to register with the commission[Authority] and participate in the Kentucky Horse Breeds' Incentive Fund.

(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the commission[Authority] outlining the procedures by which the Kentucky affiliate shall award funds from the Kentucky Horse Breeds' Incentive Fund to incentive winners who are members of the Kentucky affiliate.

(3) "Breed" means a subspecies of horse with particular physical characteristics common to the subspecies which are used in establishing the identity of a horse by a registry recognized by the Commission[Authority].

(4) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a
Kentucky affiliate's award distribution plan.

(5) "Incentive winner" means a person whose horse's performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.

(6) "Kentucky affiliate" means the Kentucky organization that is recognized by the national breed organization representing that particular breed of horse in Kentucky.

(7) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.

(8) "KHBIF" means the Kentucky Horse Breeders' Incentive Fund.

(9) "Breeder" means a person or persons engaged in the breeding of horses eligible for the KHBIF, as defined in the National Association of the Kentucky Affiliates recognized by the commissioner as a participant in the KHBIF program. If the National Association does not define "breeder," the commission shall define "breeder" as the owner of the dam of a horse at the time the horse was foaled.

(10) "Closed Breed Registry" means the registration restrictions of the official national breed registry recognized by the KHBIF. [Kentucky Affiliate] means the Kentucky organization recognized by a national breed organization as the organization representing that particular breed of horse in Kentucky.

Section 2. Registration of Kentucky Affiliate. (1) Only a Kentucky affiliate may register to participate in the KHBIF.

(2) To become eligible to receive funds from the KHBIF, a Kentucky affiliate must register with the commissioner by:

(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/02/12/06); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the commissioner.

Section 3. Eligibility of Horses. (1) A thoroughbred shall not be eligible for registration with the KHBIF, unless the standardbred consists exclusively of show horses.

(5) The color of a breed of horses shall not be the sole criterion used to describe that breed for purposes of registration with the KHBIF.

Section 4. The authority may establish, under the general jurisdiction of the Kentucky Horse Racing Commission [Authority], the Kentucky Horse Breeders' Incentive Fund Advisory Committee. If established, the advisory committee shall consist of three (3) members appointed by the chairman of the commission [Authority] by July 1 of each year. One (1) member shall be recommended to the chairman for appointment by the Kentucky Equine Education Program (KEEP). In the event that the KEEP does not make a recommendation to the chairman by July 1 of a given year, the Chairman of the Kentucky Horse Racing Commission [Authority] shall make the appointment without the recommendation. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. Each member of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(7)(a) The Kentucky Horse Breeders' Incentive Fund Advisory Committee shall advise and assist the Kentucky Horse Racing Commission [Authority] in the registration process described in this section. The advisory committee shall make a recommendation of approval or denial to the commissioner for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section.

(b) The Kentucky Horse Racing Commission [Authority] shall employ qualified personnel necessary to assist the commission [Authority] and the advisory committee in carrying out the provisions of this administrative regulation. These personnel shall serve at the pleasure of the commission [Authority], and compensation for these personnel shall be fixed by the commission [Authority].

(8) After the advisory committee recommends to the commission [Authority] the approval or denial of an application, the commission [Authority] shall consider the recommendation and whether or not the requirements of this administrative regulation have been met, and shall:

(a) Approve the application;

(b) Deny the application;

(c) Refer the application for a reasonable time for the purpose of conducting further investigation of the application.

(9) Registration shall be effective for three (3) years. The first three (3) year registration period shall consist of the period beginning January 1, 2006, and ending December 31, 2008.

(10) For the first registration period a Kentucky affiliate shall register with the commission [Authority] on or prior to March 31, 2007.

(11) For each three (3) year period beginning January 1, 2009, a Kentucky affiliate shall register with the commission [Authority] on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) year registration period.

(12) A Kentucky affiliate shall have until December 31 following the November 1 deadline set forth in subsection (11) of this section to review and provide any information previously provided to the commission [Authority] on or before the November 1 deadline.

(13) The application and the accompanying award distribution plan provided to the commission [Authority] shall set forth the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed residing in Kentucky; and

(d) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed residing in Kentucky.

(14)(a) The commission [Authority] shall grant awards to incentive winners.

(b) The award distribution plan pursuant to which awards shall be distributed to KHBIF incentive winners who are breeders or owners of horses bred and/or raced in Kentucky [winning-horses of the breed]. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization;

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization;

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization; and

4. The percentage distribution formula by which the Kentucky affiliate shall share with the national breed organization.

(15) The commission [Authority] shall recognize and designate as the sole official registrar of the Kentucky Horse Breeders' Incentive Fund for the purposes of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the commission [Authority] for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky.

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.

(16) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall be responsible for promptly notifying the commission [Authority] of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to change.

Section 3. Timing and Distribution of Awards. (1) The events eligible for awards from the Kentucky Horse Breeders' Incentive Fund, as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distrib-
buted each year.
(3) The commission [Authority], with the cooperation of each Kentucky affiliate shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.
(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:
(a) Dividing the number of horses of the breed twenty-five (25) years of age and older and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(13)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(13)(c) of this administrative regulation
The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate’s application form on the December 31 deadline preceding the three (3) year registration period; and
(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.
(5) An award to an incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the commission [Authority] pursuant to Section 2(2)(b) of this administrative regulation.
(6) The Kentucky affiliate shall, by March 1 of each year, determine the names of the incentive winners who are entitled to awards for contests held during the previous year and provide the names of the incentive winners to the commission [Authority].
(7) The Kentucky affiliate shall, by June 1 of each year, notify each incentive winner of the amount of the award to which the incentive winner is entitled by notice sent to the last known address provided to the commission [Authority] by the Kentucky affiliate.
(8) After receiving notification of an award, each incentive winner shall be required to return an enclosed claim form for the award that certifies the incentive winner is entitled to the award and that certifies the incentive winner’s taxpayer ID number or Social Security number. The claim form shall be delivered to the commission [Authority] no later than December 31 of the same year in which the commission [Authority] notified the incentive winner of the award pursuant to subsection (7) of this section.
(9) The claim form shall be the form "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders’ Incentive Fund", KHRA Form HB-2, (12/06).
(10) Any award owing to an incentive winner who cannot be located by December 31 of the year in which the commission [Authority] attempted to notify the incentive winner of the award pursuant to subsection (7) of this section, shall lapse to the KHBIF.
(11) Failure to return the claim form required by subsection (8) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.
(12) An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semi-annual Reports. (1) A semi-annual status report describing a Kentucky affiliate’s progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31. If that date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.
(2) The semi-annual report shall also include:
(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand;
(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate.

Section 5. Disputes. (1) Any dispute between the commission [Authority] and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the commission [Authority], within thirty (30) days of the action or the inaction leading to the dispute.
(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures. (1) The commission [Authority] may deny or revoke the registration of a Kentucky affiliate or national breed organization if the Kentucky affiliate or national breed organization:
(a) Knowingly violates the commission [Authority] with incorrect, false, or misleading information or with incorrect, false, or misleading information concerning any aspect of the registration of the breed represented by the Kentucky affiliate with the commission [Authority];
(b) Knowingly fails to furnish within thirty (30) days information the commission [Authority] has requested to register;
(c) Knowingly violates any provision of KRS Chapter 230 or Title 810 of 811 KAR [the administrative regulation] in any other manner.
(2) If the commission [Authority] denies or revokes the registration of a Kentucky affiliate or national breed organization, the Kentucky affiliate or national organization may request, and the commission [Authority] shall schedule, a hearing to be conducted pursuant to KRS Chapter 13B.
(3) At the conclusion of the hearing, the commission [Authority] shall, in its final order, determine whether the Kentucky affiliate or national breed organization has knowingly violated the commission [Authority] with incorrect, false, or misleading information or has knowingly failed to provide the commission [Authority] with requested information, or has knowingly violated any provision of KRS Chapter 230 or Title 810 or 811 KAR [the administrative regulation] in any other manner, and may take one (1) or more of the following actions:
(a) Deny or revoke the registration;
(b) Uphold the denial or revocation of the registration;
(c) Rescind the denial or revocation of the registration;
(d) Bar the Kentucky affiliate or national breed organization which failed to furnish the requested information or which has knowingly violated this administrative regulation from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective; or
(e) Without funds due to be allocated to the Kentucky affiliate;
(f) Withdraw funds previously allocated to the Kentucky affiliate;
(4) If a Kentucky affiliate’s designee or representative fails to appear at the hearing, the commission [Authority] may take one (1) or more of the following actions:
(a) Deny or revoke the registration; or
(b) Bar the Kentucky affiliate which failed to respond to the summons from registering foals to the fund for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;
(c) Withdraw funds previously allocated to the state affiliate; or
(d) Withhold funds due to be allocated to the Kentucky affiliate;
(e) Reschedule the hearing;
(f) For a second or subsequent violation of this administrative regulation the commission [Authority] may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for period of from one (1) to twenty (20) years.
(6) The commission [Authority] shall notify the Kentucky affiliate in writing of the action taken by the commission [Authority].
(7) If the evidence available to the commission [Authority] indicates that an individual who is a member of or acting on behalf of a Kentucky affiliate or national breed organization, knowingly provided the commission [Authority] with incorrect, false, or misleading information, knowingly failed to pro-
provide the Authority with requested information, or knowingly violated the federal Horse Protection Act, 15 U.S.C. Sections 1821 through 1831, or any other federal or state law pertaining to the breeding, racing, or showing of horses, or reflecting on the honesty and trustworthiness of the individual to participate in the KHIBF (the administrative regulation in any other manner), the commission may take one (1) or more of the following actions: 

(a) Authority may Condition the continuing registration of the Kentucky affiliate in the KHIBF upon the exclusion of that individual from any further participation in work related to the KHIBF. 
(b) Withdraw funds previously allocated to the individual. 
(c) Withhold funds due to be allocated to the individual. 
(d) Bar the individual from further participation in the KHIBF for a period of time proportionate to the seriousness of the violation. 
(e) An individual against whom disciplinary action has been taken under subsection (7) of this section may appeal the matter to the commission pursuant to KRS Chapter 138. 

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference. 
(a) "Application for Registration of State Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, 12/05/12/06; and 
(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, 12/05/12/06. 
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission[Authority]. 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. 
(3) This material may also be obtained from the KHRACOM Web site at www.khrc.ky.gov[www.khrc.ky.gov].

ROBERT M. BECK, Jr., Chairman 
LARRY R. BOND, Deputy Secretary 
APPROVED BY AGENCY: December 30, 2008 
FILED WITH LRC: December 31, 2008 at 3 p.m. 
CONTACT PERSON: Jamie Eads, Director, Division of Breeders' Incentives and Development, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT 
Contact Person: Jamie Eads 
(1) Provide a brief summary of: 
(a) What this administrative regulation does: This regulation sets forth the procedures for administering the Kentucky Horse Breeder's Incentive Fund, established in 2006 by KRS 230.804. 
(b) The necessity of this administrative regulation: The regulation is necessary to provide mechanisms for registering with the Fund, distributing funds among registered groups, and imposing disciplinary measures for violation of the regulation. 
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.804 specifically authorizes the Kentucky Horse Racing Commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." The amendments to the regulation add further details to the regulation within the parameters of the statute. GLC will assist in the implementation of the administrative regulation. 
(d) The amendment will assist in the implementation of the administrative regulation. The amendment will ensure that incentive funds are paid only to individuals who own bona fide members of the breed and who comply with the law. 
(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 11 groups registered with the Kentucky Horse Breeders' Incentive Fund, with a combined membership of 115, 305. 
(3) List the actions that each of the regulated entities identified in question (2) will have to take to comply with this administrative regulation or amendment: No specific actions are required, except that henceforth an applicant to the Fund group must demonstrate that it has a closed breed registry. 
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost. 
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The integrity of the Fund will be further guaranteed by clarifying the commission's power to take action against individuals who violate the law. 
(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. 
(a) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded from registration fees associated with the Kentucky Horse Breeders' Incentive Fund. 
(2) Provide an assessment of whether an increase in fees or funding will be necessary to implement the administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement the changes in this amendment. 
(3) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established, and existing fees are not increased. 
(3) TIERING. Is tiering applied? Tiering is not applied; the registrants in the Fund participate on an equal basis.
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What 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 impacts the Kentucky Horse Racing Commission, which administers the Kentucky Horse Breeders’ Incentive Fund.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.804 establishes the Kentucky Horse Breeders’ Incentive Fund and authorizes the Kentucky Horse Racing Commission to promulgate regulations to administer the Fund.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. The amendment to this regulation will not alter the expenditures and revenues of the Kentucky Horse Racing Commission.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? None.
(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
"Revenues (+/-)"
"Expenditures (+/-)
"Other Explanation:"

STATEMENT OF EMERGENCY
902 KAR 20:106E

This emergency administrative regulation is being promulgated to clarify that an ambulatory surgical center shall not retain a patient longer than twenty-four (24) hours from the time of admission to discharge. This action must be taken on an emergency basis to maintain consistency with federal regulations by clarifying the licensure standard related to the length of stay permitted in an ambulatory surgical center. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) would pose a threat to public health and welfare. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Emergency Amendment)
902 KAR 20:106E. Operation and services; ambulatory surgical center.

EFFECTIVE: January 5, 2009
STATUTORY AUTHORITY: KRS 216B.040, 216B.105(2), (3), 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) and (c) require the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. The administrative regulation establishes the licensure requirements for the operation and services of ambulatory surgical centers.

Section 1. Definitions. (1) "Admission" shall be deemed to have occurred after completion of the registration process and at the first instance of rendering medical care to the patient on the day of the scheduled procedure as a part of or in anticipation of a surgery.
(2) "Ambulatory surgical center" means a public or private institution that is:
(a) Hospital based or freestanding;
(b) Operated under the supervision of an organized medical staff, and
(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.
(3) "Cabinet" is defined by KRS 216B.015(5).
(4) "Center" means an ambulatory surgical center.
(5) "Licensee" means a person or business entity that has been issued and holds a valid ambulatory surgical center license from the Cabinet for Health and Family Services.

Section 2. Administration and Operation. (1) Licensee.
(a) The Licensee shall be legally responsible for operation of the center and for compliance with federal, state, and local laws and regulations pertaining to operation of the center;
(b) The Licensee shall develop written policies for the administration and operation of the center. Medical staff shall approve medical policies. Policies shall include:
   1. Personnel practices and procedures. These shall be available to personnel;
   2. Job descriptions for each level of personnel including the authority, responsibilities, and actual work to be performed in each classification;
   3. Written infection control measures. Written procedures shall govern the use of aseptic techniques and procedures in all areas of the center;
   4. Sterilization of supplies;
   5. Disposal of patient waste and other potentially infectious materials;
   6. Examination by a pathologist of tissues removed during surgery. Policies shall identify tissues which require examination and which do not;
   7. Instances in which consultations with other physicians, dentists, or podiatrists shall be required;
   8. A list of surgical procedures which may be performed in the center;
   9. Granting and withdrawal of medical staff surgical privileges and privileges for the administration of anesthetics; and
   10. Arrangement for transportation of patients who require hospital care.
(2) Personnel.
(a) Administrator. The center shall have an administrator responsible for the day to day operation of the center and for delegating that responsibility in his absence.
(b) Current employee records shall be maintained and shall include:
   1. A resume of the employee's training and experience;
   2. Evidence of current licensure or registration if required; and
   3. Reports of accidents occurring while the employee is on duty.
(c) Medical staff requirements. The center shall have an organized medical staff responsible for the quality of medical care provided in the center and for the ethical and professional practices of its members.
   1. The medical staff shall develop the center's medical care policies;
   2. Surgical procedures shall be performed by physicians, dent-
ists, or podiatrists who are legally authorized to perform them and have been granted privileges to perform the procedures by the center through its medical staff or governing body.

(d) Pharmaceutical, radiology and laboratory services provided directly by the center or through an agreement with another entity shall be provided under the direction of a licensed pharmacist, a physician specializing as a radiologist, and a physician specializing as a pathologist, respectively, on a full-time, part-time or regular consultative basis.

(e) The center shall employ registered nurses on a full-time basis for patient care in the operating and postanesthesia recovery room.

(f) The center shall employ other nursing personnel, aides and technicians as required to meet the needs of the patients served by the center including personnel to be responsible for supervision, indexing, and filing of medical records.

(3) A center shall not retain a patient longer than twenty-four (24) hours from the time of admission to discharge. [The center shall not provide accommodations for overnight stay.]

(4) The center shall not have provisions for obstetrical deliveries.

(5) Physician coverage. A physician or the practitioner that performs the surgery shall be present in the center until all patients have been discharged and have left the center.

(6) The center shall have a physician on the medical staff with admitting privileges in a nearby hospital who is responsible for admitting patients in need of inpatient care.

(7) Medical records.

(a) Content. Adequate and complete medical records shall be prepared for all patients admitted to the surgical center. Notes shall be legibly written or typed and signed. A medical record shall include the following information:

1. Name and address of person or agency responsible for patient;
2. Patient identification data, including the patient's:
   a. Name;
   b. Address;
   c. Age;
   d. Sex; and
   e. Marital status;
3. Date of admission and discharge;
4. Referring and attending physicians', dentists' and podiatrists' names;
5. A medical history and physical evaluation that was performed and entered into the medical record no more than thirty (30) days prior to surgery;
6. A surgical consent form that has been signed by the patient or his legal representative prior to the surgical procedure;
7. All preoperative diagnostic studies and laboratory tests;
8. Special examinations, such as consultations, clinical, laboratory, and x-ray;
9. Nurses' notes;
10. Complete medical record signed by the operating surgeon, including:
   a. Anesthesia record;
   b. Preoperative diagnosis;
   c. Operative procedures and findings;
   d. Postoperative diagnosis;
   e. Condition of patient upon discharge;
   f. Postoperative instructions; and
   g. If required, tissue diagnosis by a pathologist on specimens surgically removed;
11. Charts including records of temperature, pulse, respiration, and blood pressure; and
12. Medication record including:
   a. Name of medication;
   b. Dosage;
   c. Date and time of administration;
   d. Method of administration;
   e. Name of prescribing physician, dentist, or podiatrist; and
   f. Name of person who administered the medication.
(b) Indexing. Medical records shall be systematically filed for ready access to authorized personnel.
(c) Ownership. Records of patients shall not be removed from the center's custody except in accordance with a court order or subpoena. Medical records shall be made available if requested for inspection by duly authorized representatives of the cabinet.

(d) The attending physician, dentist, or podiatrist shall complete and sign the medical record of the patient as soon as practicable after discharge, but not to exceed ten (10) days.

(e) Orders for medication and treatment shall be dated, timed, and signed by the prescribing physician, dentist or podiatrist, or the health care practitioner who receives the verbal order. Verbal orders shall be countersigned by the prescribing physician, dentist, or podiatrist within forty-eight (48) hours, except that records for Schedule II drugs shall be signed immediately. A record of medication administered to the patient shall be included in the record and signed by the person administering the medication.

(f) Retention of records. Medical records shall be retained for a minimum of five (5) years or, in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(6) Bedrails shall be available for patients in the admitting and recovery units.

Section 3. Sanitary Environment. The surgical center shall provide a sanitary environment to avoid sources and transmission of infections.

(1) An infection committee composed of members of the medical and nursing staff shall be established and be responsible for controlling and preventing infections within the center.

(2) Non-disposable sterile supplies shall be reprocessed if the integrity of the pack has not been maintained.

(3) The center shall have suitable equipment for rapid and routine sterilization of supplies, utensils and equipment and shall store them in a clean, convenient and orderly manner.

(4) Continuing education shall be provided to all surgical center personnel on the cause, effect, transmission, prevention and elimination of infections.

Section 4. Surgical Services. (1) The center shall provide treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) The center shall have at least one (1) operating room.

(3) A patient shall be examined by a physician, dentist, or podiatrist acting within the professional's scope of practice immediately prior to surgery to evaluate the risk of anesthesia and the risk of the procedure to be performed.

(4) A registered nurse shall be available to circulate at all times. The operating rooms shall be supervised by a registered nurse.

(5) The center shall have on file a list of all physicians, dentists and podiatrists with surgical privileges at the center and the privileges assigned to each by the medical staff.

(6) The center shall maintain a complete and up-to-date operating room register.

(7) The following equipment shall be available in the center:

(a) Oxygen;
(b) Mechanical ventilatory assistance equipment including ambu bag, manual breathing bag, and ventilator;
(c) Cardiac defibrillator;
(d) Cardiac monitoring equipment;
(e) Tracheostomy set;
(f) Laryngoscopes and endotracheal tubes;
(g) Suction equipment; and
(h) Emergency medical equipment and supplies specified by the medical staff.

(8) The center shall have arrangements for obtaining an adequate supply of blood in a timely manner to meet the center's needs.

(9) A physician's, dentist's, or podiatrist's orders shall be in writing and signed by the physician, dentist, or podiatrist.

(10) Except for cases requiring only local infiltration anesthesia, a physician anesthesiologist, a physician qualified to administer anesthesia, a dentist qualified to administer anesthesia, or a registered nurse anesthetist acting under the direction of the operating surgeon shall administer the anesthesia and remain present during the surgical procedures and until the patient is fully recov-
ered from the anesthetics.

(11) The physician, dentist, or podiatrist in charge of the patient shall be responsible for seeing that tissue removed during surgery is delivered to the center's pathologist and that an examination and report is made on the tissue, if required by the center's written policies.

(12) Optional interruption of pregnancies. An ambulatory surgical center shall comply with the applicable Kentucky statutes concerning the voluntary interruption of pregnancies, including KRS 311.710 to 311.810.

Section 5. Postanesthesia Recovery Services. (1) The center shall have at least one (1) postanesthesia recovery unit
(2) There shall be adequate staff available in the recovery unit so that no patient is left alone at any time.
(3) A registered nurse shall be present in the recovery unit when a patient is recovering from anesthesia.
(4) A registered nurse shall be available to the recovery unit at all times.
(5) A person staffing the postanesthesia recovery unit shall be adequately trained in all aspects of postoperative and postanesthetic care.
(6) The recovery unit nurse shall record a nursing note on a patient, noting the following:
(a) Postoperative abnormalities or complications;
(b) Pulse;
(c) Respiration;
(d) Blood pressure;
(e) Presence or absence of swallowing reflex;
(f) Cyanosis; and
(g) The general condition of the patient.
(7) Available equipment shall include the following:
(a) Suction machine;
(b) Stethoscope;
(c) Sphygmomanometer;
(d) Emergency crash cart;
(e) Necessary drugs; and
(f) Oxygen.
(8) The surgical center shall provide suitable accommodations for its patients. There shall be adequate floor space, furnishings, bed linens, and such other utensils, equipment and supplies as are reasonably required for the proper care of the patients accommodated.

Section 6. Pharmaceutical Services. (1) The center shall have a licensed pharmacy or have arrangements for promptly obtaining prescribed drugs and biologicals from a pharmacy.
(2) The center shall provide appropriate methods and procedures for storage, control, and administration of drugs and biologicals, developed with the advice of a licensed pharmacist. The pharmacist shall properly label drugs for individual patients.
(3) Licensed medical or nursing personnel shall administer medications in accordance with medical and nursing standards of practice set forth in KRS 311.360 to .500, 311.530 to .820, 313.010 to .258, 313.400 to .470, 314.011 to .110, 314.193, and 314.195.
(4) Controlled substances
(a) Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record in which is recorded the:
1. Name of the patient;
2. Date and time;
3. Kind of controlled substance;
4. Dosage and method of administration of the controlled substance;
5. Name of the physician who prescribed controlled substance; and
6. Name of the nurse who administered it.
(b) In addition to the requirements established in paragraph (a) of this subsection, there shall be a recorded and signed Schedule II controlled substances count daily conducted by a member of the nursing staff, and Schedule III, IV, and V controlled substances count once per week by a member of the nursing staff.

Section 7. Radiology Services. (1) The center shall provide radiology services directly through an agreement with a licensed hospital, or through an independent radiology service.
(2) The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852.
(3) If radiology services are provided directly by the center:
(a) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against:
1. Fire and explosion hazards;
2. Electrical hazards; and
3. Radiation hazards;
(b) A physician specializing in radiology shall supervise the department and interpret films that require specialized knowledge for accurate reading;
(c) Signed reports shall be promptly entered into the medical record and duplicate copies kept in the department; and
(d) Orders for radiology procedures shall be made by a physician, dentist or podiatrist.

Section 8. Laboratory Services. (1) The center shall provide laboratory services directly through its own licensed laboratory, through an agreement with a laboratory in a licensed hospital, or through an agreement with a licensed laboratory nearby.
(2) The medical laboratory providing services to the center shall be licensed pursuant to KRS 333.060, unless it is a part of a licensed hospital.
(3) Laboratory examinations shall be made only upon the request of a physician, dentist, or podiatrist.
(4) The laboratory shall provide tissue pathology and diagnostic cytology examinations. Tissues removed from a patient during surgery shall be examined by a physician specializing in pathology if required by the center's written policies; and
(5) Laboratory and tissue pathology reports shall be signed and entered into the medical record.

Section 9. Utilization Review. (1) The surgical center shall have in effect a plan for utilization review of their services on at least a quarterly basis by a committee of physicians, dentists, or podiatrists who have no financial interest in the center.
(2) Reviews shall be made of admissions and professional services furnished including utilization of surgical services and tissue reports.

SADIE N. REYNOLDS, Esq. Inspector General
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 5, 2009
FILED WITH LRC: January 5, 2009 at 3 p.m.
CONTACT PERSON: Dr. Brown, Office of Legal Services, 275 East Main Street 5 West, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes licensure requirements for the operation and services of ambulatory surgical centers.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1)(a) and (c) which requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing ambulatory surgical center standards necessary for the proper administration of the licensure function.
(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 ambulatory surgical center standards necessary for the proper administration of the licensure function.

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

(a) How the amendment will change this existing administrative regulation: This amendment defines the term "admission" and clarifies that an ambulatory surgical center shall not retain a patient longer than twenty-four (24) hours from the time of admission to discharge. Currently, this administrative regulation prohibits ambulatory surgical centers from retaining patients for overnight stays.

(b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to clarify the length of time allowed for patient stays in ambulatory surgical centers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 2168.042 by clarifying the licensure standard related to the length of stay permitted in ambulatory surgical centers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 2168.042 by clarifying the licensure standard related to the length of stay permitted in ambulatory surgical centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the thirty-seven (37) currently licensed ambulatory surgical centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Ambulatory surgical centers will be permitted to retain a patient up to twenty-four (24) hours from the time of admission to discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because this amendment does not alter the current fee schedule, ambulatory surgical centers will not incur additional costs to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies the licensure standard related to the length of stay permitted in an ambulatory surgical center.

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

(a) Initially: No additional costs will be incurred by the Office of Inspector General to implement this amendment.

(b) On a continuing basis: No additional costs will be incurred by the Office of Inspector General to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will 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 amendment does not establish any fees, nor does it increase any fees. The initial and annual licensure fee of $270 for ambulatory surgical centers has not been altered by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the thirty-seven (37) currently licensed ambulatory surgical centers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 2168.042

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the Office of Inspector General to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the Office of Inspector General 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:**

**STATEMENT OF EMERGENCY**

921 KAR 2:015E

This emergency administrative regulation is necessary to change the standards for all levels of care for the State Supplemental Program due to the federal and states' agreement to pass through the Supplemental Security Income 2009 cost of living adjustment. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the U.S. Department of Health and Human Services to pass along any cost of living adjustments in Supplemental Security Income benefits to State Supplemental Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the 5.8% Supplemental Security Income cost of living adjustment in October 2008. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standards effective January 1, 2009. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHAR, Governor

JANIE MILLER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**

Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.


**EFFECTIVE:** December 22, 2008
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 418.2009. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).
(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind or had a disability.
(3) "Department" means the Department for Community Based Services or its designee.
(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.
(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part-time.
(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2006.
(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health, Developmental Disabilities, and Addiction and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.
(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383t to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.
(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.
(3) A mandatory state supplementation payment shall be equal to the difference between:
(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and
(b) The total of the SSI payment, or
2. The total of the SSI payment and other income for the current month.
(4) A mandatory payment shall discontinue if:
(a) The needs of the recipient as recognized in December 1973 have decreased, or
(b) Income has increased to the December 1973 level.
(5) The mandatory payment shall not be increased unless:
(a) Income as recognized in December 1973 decreases;
(b) The SSI payment is reduced, but the recipient's circumstances are unchanged, or
(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.
(6) If a husband and wife are living together, an income change after September 1974 shall not result in a decreased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:
(a) 907 KAR 1:011, Sections 1(b)(3), 5(5), (6), (7), (13), 10, and 11;
(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), (12), (13), (16), and (18);
(c) 907 KAR 1:645;
(d) 907 KAR 1:650, Section 1(7); and
(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), (4), (6), (10), and (12).
(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:
(a) Furnish a Social Security number;
(b) Apply for a Social Security number, if a Social Security number has not been issued.
(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.
(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional state supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:
(a) Requires a full-time living arrangement;
(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and
(c) Resides in a personal care home and is sixteen (16) years of age or older in accordance with 922 KAR 20.036, Section 3(3)(a);
2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20.041, Section 3(4); or
3. Receives caretaker services and is at least eighteen (18) years of age.
(2) A full-time living arrangement shall include:
(a) Residence in a personal care home that:
1. Meets the requirements and provides services established in 902 KAR 20.036, and
2. Is licensed under KRS 216B.010 to 216B 131;
(b) Residence in a family care home that:
1. Meets the requirements and provides services established in 902 KAR 20.041; and
2. Is licensed under KRS 216B.010 to 216B.131; or
(c) A situation in which a caretaker is required to be hired to provide care other than room and board.
(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the month after the month of:
1. Discharge to a:
   a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or
   b. Residence; or
2. Death of the state supplementation recipient; and
(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.
(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.
(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the month after the month of:
1. Discharge to a:
   a. Nursing facility, unless the admission is for temporary medi-
cal care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

d. Death of the state supplementation recipient; and

(b) Notified a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or


(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)(2) of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to polices for the medicare needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (5), (7), (11), (17), (21), (42a); (b) Subtraction of the total of paragraph (a) and (b) of this subsection from the standard of need in Section 6 of this administrative regulation.

(b) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(c) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be considered for the needs of the ineligible spouse or minor dependent child

(d) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after January 1, 2003, $1,134 [2006, $1,137];

(b) For a resident of a family care home on or after January 1, 2009, $846 [2009, $895]; or

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2009, $738 [2009, $699];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2003, $1,072 [2006, $1,077];

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2009, $1,126 [2006, $1,077].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months.
of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;
(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and
2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;
(b) Psychiatric hospital; or
(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or
(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month
(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and
(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;
2. Care for a population that is thirty-five (35) percent mental illness or mental retardation clients in all of its occupied licensed personal care home beds and who have at:
   a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;
   b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or
   c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;
4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;
5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and
6. File an [*STS-1, Mental Illness or Mental Retardation (M/MR) Supplement Program Application for Benefits*], with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail an [*STS-2, Mental Illness or Mental Retardation (M/MR) Supplement Program Notice of Decision to Personal Care Home*] to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and
(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an [*STS-3, Mental Illness or Mental Retardation (M/MR) Supplement Program Monthly Report Form*] that:
1. Lists every resident of the personal care home who was a resident on the first day of the month;
2. Lists the resident's Social Security number; and
3. Annotates the form, in order to maintain confidentiality, as follows with:
   a. Star indicating a resident has a mental illness or mental retardation diagnosis;
   b. Check mark indicating a resident receives state supplementation;
   c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and
   (b) Mail the STS-3 to the department postmarked by the fifth working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;
(b) Payment; and
(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1) a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health, Developmental Disabilities, and Addiction [and Mental Retardation] Services.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be completed through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;
(b) Side effects and adverse medication reactions with special attention to psychotropics;
(c) Signs and symptoms of an acute onset of a psychiatric episode;
(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;
(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and
(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and
(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the
personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and
2. a. Has received mental illness or mental retardation basic training; or
   b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health, Developmental Disabilities, and Addiction [and Mental Retardation] Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(6) Attendance of an advanced level training workshop shall be optional.

(7) The Department for Mental Health, Developmental Disabilities, and Addiction [and Mental Retardation] Services shall provide within five (5) working days a.

(a) Certificate to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home: (a) That has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216,320 and KRS 216,322; and
2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)(2) of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

   a. Demonstrates a knowledge of psychotropic drug side effects, and

   b. Is on duty as specified in Section 12(1)(c) of this administrative regulation; and

   1. An activity is being regularly provided that meets the needs of a resident.

   a. A resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

   b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or mental retardation clients, as specified in Section 12(1)(c)(2) of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed ["STS-4, Mental Illness or Mental Retardation (MIMR) Supplement Certification Survey"] within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216,330.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to the personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall mail an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-2; and

(b) Within ten (10) working days after the STS-2 is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 12(1)(c)(2) of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Mental Retardation (MIMR) Supplement Program Application for Benefits", edition 1/09/14/07;

(b) "STS-2, Mental Illness or Mental Retardation (MIMR) Supplement Program Notice of Decision to Personal Care Home", edition 1/09/14/07;

(c) "STS-3, Mental Illness or Mental Retardation (MIMR) Supplement Program Monthly Report Form", edition 1/09/14/07;
(d) "STS-4, Mental Illness or Mental Retardation (MI/MR) Supplement Certification Survey", edition 1(05/4/07).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: December 12, 2008
FILED WITH LHC: December 22, 2008 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5-W-B, Frankfort, Kentucky 40601, phone (502) 563-7950, fax (502) 564-7673

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplementation Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind or have a disability and its compliance with an agreement with the Department of Health and Human Services to pass along the Supplemental Security Income increase cost of living adjustment to State Supplementation recipients.
(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 eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind or have a disability.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulations by increasing the standards of need for all levels of care in the State Supplementation Program for persons who are aged, blind or have a disability. The increase reflects the cost of living adjustment to be implemented in calendar year 2009 by the Social Security Administration for Supplemental Security Income (SSI) recipients. The amendment also makes technical corrections.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2008. Technical corrections were necessitated to promote clarity and reflect organizational changes and other recent regulatory amendments.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment for Supplemental Security Income to State Supplementation Program through an increase in the program's standard of need for all recipients.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the 2009 5.8% cost of living adjustment for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and making other technical corrections.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of July 2008, there were 4,148 recipients of State Supplementation Program 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: The payment to a resident of a Personal Care Home is $1,194 minus the personal care allowance of $60 for the recipient. The payment to a resident of a Family Care Home is $846 minus the personal care allowance of $40 for the recipient. The payment to a caretaker of a single person is $734. The payment to a caretaker of a couple, one requiring care, is $1,072. The payment to a caretaker of a couple, both requiring care, is $1,126.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3) or their care providers.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will receive the 5.8% cost of living adjustment implemented by the Social Security Administration.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Although Kentucky will pass along the 5.8% federal cost of living adjustment by increasing the State Supplementation Program's standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2009 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.
(b) On a continuing basis: Although Kentucky will pass along the 5.8% federal cost of living adjustment by increasing the State Supplementation Program's standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2009 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g
2. State compliance standards. KRS 194A.050 (1), 205.245
3. Minimum or uniform standards contained in the federal mandate. No
4. Will this administrative regulation impose sticter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stiffer standard, or additional or different responsibilities or requirements. None imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g
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? The State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate 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 State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate any additional revenue in subsequent years.
   (c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.
   (d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program during subsequent years.

   Note: If specific dollar estimates cannot be determined, provide a brief narrative explaining the fiscal impact of the administrative regulation.
   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

STATEMENT OF EMERGENCY
921 KAR 4:116E

The emergency administrative regulation, 921 KAR 4:116E, Low Income Home Energy Assistance Program or "LIHEAP," is necessary to implement enhanced federal funding, effect programmatic recommendations from the Community Action of Kentucky, Inc., and increase maximum benefits to clients to better realize and respond to actual heating costs. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (H.R. 2638) allocated additional federal funds to Kentucky's LIHEAP program for Federal Fiscal Year 2009. The increase in benefit is necessary to make certain the federal funds are expended within the federal year. Also, the increase in benefits will ensure that the LIHEAP crisis component better meets the actual heating costs seen by eligible low income households as a result of recent utility cost increases. In accordance with KRS 13A.190, the emergency administrative regulation will provide for the full utilization of federal funding for winter 2009 and relieve an imminent threat to public health, safety, or welfare by providing additional home energy assistance to households with the highest energy burden. An ordinary administrative regulation would not allow the agency sufficient time to implement the benefit increase for eligible low-income, natural gas and electric energy users for the winter 2009 LIHEAP crisis component, which begins January 1st. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

921 KAR 4:116E. Low Income Home Energy Assistance Program or "LIHEAP."

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621
EFFECTIVE: December 22, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance.

Section 1. Definitions. (1) "Agency" means [Kentucky Association for Community Action Kentucky (KAC) or KAGA], or a local community action agency contracted to provide LIHEAP.
(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8622(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.
(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.
(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating crisis.
(5) "Economic unit" means one (1) or more persons sharing common living arrangements.
(6) "Emergency" means, at the time of application, the household:
   (a) Is without heat;
   (b) Will be disconnected from a utility service within forty-eight (48) hours;
   (c) Will be without fuel within four (4) days; or
   (d) Without cooling as specified in Section 3 of this administrative regulation.
(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.
(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.
(9) "Heating season" means the period from October through April.
(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.
(11) "Household demographics" means an applicant's:
   (a) Address;
   (b) Household composition that includes:
      1. Size;
      2. Age group;
      3. Relationship to applicant;
      4. Sources of income;
      5. Liquid assets; and
      6. Type of housing;
   (c) Heat source
(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty
income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9002(2).

(13) "Life-threatening situation" means, at the time of application, a household is or shall be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Poverty level" means the "level of poverty", as defined in subsection 12 of this section.

(15) "Principal residence" means the place:
(a) Where a person is living voluntarily and not on a temporary basis;
(b) An individual considers home;
(c) To which, when absent, an individual intends to return; and
(d) Is identifiable from another residence, commercial establishment, or institution.

(16) "Subsidy component" means the heating component that provides an eligible household with:
(a) A one (1) time annual payment to the household's energy provider; or
(b) Payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:
(a) Proof of household income;
(b) Statement of liquid resources;
(c) Most recent:
   1. Heating bill;
   2. Cooling bill; or
   3. Verification that heating or cooling is included in the rent;
(d) Statement of household demographics; and
(e) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9002(2).

(2) Liquid assets.
(a) The household shall have total liquid assets at time of application of not more than:
   1. $2,000;
   2. $3,000 if at least one (1) member in the household is:
      a. Age sixty (60) or older; or
      b. Disabled, or
   3. $4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.
(b) An excluded asset shall be:
   1. A vehicle;
   2. Household goods;
   3. Personal effects;
   4. A household or personal belonging;
   5. A principal residence;
   6. Cash surrender value of an insurance policy;
   7. A prepaid burial policy;
   8. Real property; and
   9. Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.

(3) The household shall be responsible for paying:
(a) Home heating;
(b) Cooling costs; or
(c) Heating or cooling costs as an undesignated portion of the rent.

(4) Crisis component. In addition to meeting the criteria in subsections (1) through (3) of this section, an applicant shall:
(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;
(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat source; or
(c) Have received a notice of eviction for nonpayment of rent, if home heating cost is included as an undesignated portion of the rent.

(5) Summer cooling component. In addition to meeting the criteria in subsections (1) through (3) of this section, to be eligible to receive a window air conditioner unit, an applicant shall:
(a) Be without an adequate source of cooling; and
(b) Have a household member who:
   1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician'sletterhead;
   2. Is sixty-five (65) years of age or older; or
   3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household's heating fuel provider shall be made for the full benefit amount as follows:
(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.
(b) The amount of benefits shall be based upon household income and type of heating fuel used.
(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.
(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.
(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating crisis. A household living in federally assisted housing may be eligible.
(a) A benefit may be:
   1. Fuel or other energy source for heating;
   2. A space heater loaned on a temporary basis until:
      a. Fuel is delivered; or
      b. Another resource is located to alleviate the crisis;
   3. A blanket or sleeping bag; or
   4. Emergency shelter.
(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.
(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable for the primary heating fuel, minus a required copayment. The maximum allowable benefit shall equal cost for delivery up to:
   1. Two (2) tons of coal;
   2. Two (2) cords of wood;
   3. 200 gallons of propane;
   4. 200 gallons of fuel oil;
   5. 200 gallons of kerosene; or
   6. $400 for natural gas or electric, effective January 1, 2009.

Or $250 for natural gas or electric, effective July 1, 2009, unless:
(i) Program funding is enhanced through a federal or state award; and
(ii) The cabinet approves an increase to the benefit amount.

(ad) A household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel.

(g) An eligible household, including a household residing in:
   1. Subsidized or nonsubsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.
   2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(f) The copayment amount required by paragraph (e) of this subsection shall be based on housing type and the household's percentage of poverty, as follows:
For cooling component benefits, a household shall be eligible for:
(a) A one (1) time annual payment to the household's:
   1. Electric utility provider; or
   2. Landlord, if the cost of cooling is included as an undesignated portion of the rent.
(b) A window air conditioner unit, if:
   1. Criteria in Section 3(5) of this administrative regulation are met; and
   2. The agency has the funding to purchase a window air conditioner unit or has a window air conditioner unit available for the household; and
   (c) Benefits based on:
      1. The household's level of poverty; and
      2. a. Subsidized housing with:
         (i) Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or
         (ii) Seventy-five (75) percent to 130 percent of poverty receiving up to seventy-five (75) dollars; or
      b. Nonsubsidized housing with:
         (i) Zero to seventy-four (74) percent of poverty receiving up to $175; or
         (ii) Seventy-five (75) percent to 130 percent of poverty receiving up to $125.

Section 5. Benefit Delivery Methods. (1) (a) Payment under a subsidy component shall be authorized by a one (1) party check mailed payable to the household's:
   1. Energy provider, or
   2. Landlord, if the cost of heating is included as an undesignated portion of rent.
   (b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating.
   (2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:
      (a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;
      (b) A vendor who supplies a heater, blanket, or emergency lodging; or
      (c) A landlord, if heating cost is included in the rent.
   (3) For the cooling component, cash benefits shall be paid to:
      (a) Household's electric utility provider; or
      (b) landlord, if cooling cost is included in the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards in Section 8 of this administrative regulation shall be provided an administrative review by the agency.
   (2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2.055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.
   (a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.
   (b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.
   (c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.
   (d) A prospective vendor shall:
      1. Allow agency and authorized federal or state representatives to inspect records upon request;
      2. Maintain records of financial transactions regarding LIHEAP for a period of three (3) years;
      3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;
      4. Provide fuel as specified and at the price quoted;
      5. Comply with federal and state law pertaining to equal employment opportunity; and
      6. Comply with billing procedures established by the agency.
   (e) A household shall select a vendor from the agency's approved vendor list.
   (2) Crisis component.
   (a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.
   (b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.
   (c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.
   (d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:
      1. Eighteen (18) hours for a life-threatening situation; or
      2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.
   (2) Under a crisis or cooling component, benefits shall be authorized so that:
      (a) Crisis situation is resolved within forty-eight (48) hours; or
      (b) Life-threatening situation is resolved within eighteen (18) hours.
   (3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.
   (2) If additional federal funds are made available, LIHEAP may be reauthorized after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.
   (2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:
      (a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 100 percent of the poverty level.
      (b) $400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet as needed.
      (c) $25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed $300 for each family if the payment:
         (a) Prevents the removal of a child from the family; or
         (b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:
   (1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.
   (2) A household shall be charged, in the normal billing process,
the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state’s annual Low Income Home Energy Assistance Program plan shall be prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, section 96.827. The plan must be submitted no later than June 1 of each year. The plan must be submitted in writing to the Commission for the Department of Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

JANIE MILLER, Secretary
APPROVED BY AGENCY: December 12, 2008
FILED WITH LRC: December 22, 2008 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Justin Dearinger, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky’s LIHEAP program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has responsibility under 42 U.S.C. 8621 to implement the LIHEAP program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists in the effective administration of the statutes by establishing eligibility and benefits criteria for the implementation of the LIHEAP program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation modifies the maximum utility benefit payable under the LIHEAP crisis component from $250 to $400 for households whose heat is provided through natural gas and electric. The increased benefit amount will sunset on July 1, 2009, unless program funding is enhanced through federal or state award, and the cabinet approves a subsequent increase above $250. The amendment also clarifies assets excluded during eligibility determination and provides further clarification that $400,000 is available for crisis contingency funds based upon need approved in advance by the cabinet. The amendment makes technical corrections to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement enhanced federal funding, effect programmatic recommendations from the Community Action of Kentucky, Inc., and increase maximum benefits to clients to better realize and respond to actual heating costs. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (H.R. 2638) allocated additional federal funds to Kentucky’s LIHEAP program for Federal Fiscal Year 2009. The increase in utility benefit is necessary to make certain the federal funds are expended within the federal year. Also, the increase in benefits will ensure that the LIHEAP crisis component better meets the actual heating costs seen by eligible low income households as a result of recent utility cost increases.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of 42 U.S.C. 8621 by clarifying excluded assets and increasing the crisis component benefit for natural gas and electric, to better reflect actual heating cost increases.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by allowing the cabinet and its partners, in their implementation of LIHEAP, to better serve vulnerable households with an increased utility benefit under the crisis component and an increase in the preventive assistance fund.
(3) 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) The agencies affected by this administrative regulation: Kentucky’s Community Action Network will be able to extend more benefits and services to low income households. The extension for winter 2009 will promote stability and living standards for households who, for instance, are transitioning from welfare to work, contain a child at risk for malnutrition, or have a family member who has a disability or is elderly. The increase in benefits for households whose heating source is natural gas or electric will also better reflect increases in actual heating costs.
(b) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will not require any additional actions on the part of the LIHEAP applicant or participants.
(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to LIHEAP applicants or participants.
(4) As a result of the amendment, what benefits will accrue to the entities identified in question (3): All natural gas and electric applicants and participants will benefit from the amendment to this administrative regulation by receiving an increased utility assistance benefit.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: In LIHEAP program for FFY 2009, $24,385,000 in additional funding is required (and federally awarded) for the enhanced crisis component benefit for households whose energy source is natural gas or electric.
(b) On a continuing basis: The U.S. Department of Health and Human Services allocates LIHEAP funding annually to states. The enhanced benefit amount for natural gas and electric households will expire July 1, 2009, unless program funding is enhanced through a federal or state award, and the cabinet approves a subsequent increase to the $250 benefit amount. The cabinet will administer and implement LIHEAP in Kentucky within federal and state appropriations.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementing and enforcing of this administrative regulation for the LIHEAP program is a 100% federal fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Any initial increase in funding was provided through the enactment of the con-
continuing resolution of 2009. The cabinet will implement and enforce this administrative regulation in subsequent years within any federal and state appropriations for the LIHEAP.

(b) 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 any fees.

(9) TIERING: Is tiering applied? Tiering has not been applied, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 8621
2. State compliance standards KRS 194A.010, KRS 194A.050
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 8621
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 194A.010, 194A.050(1), 194A.080, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government during the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government in subsequent years.
(c) How much will it cost to administer this program for the first year? In LIHEAP program for FFY 2009, $24,385,000 in additional funding is required (and federally awarded) for the enhanced crisis component benefit for households whose energy source is natural gas or electric.
(d) How much will it cost to administer this program for subsequent years? The U.S. Department of Health and Human Services allocates LIHEAP funds on an annual basis. The new natural gas and electric benefit rate expires on July 1, 2009, unless funding is enhanced through a federal or state award and the Cabinet approves the continuance of the new benefit rate. The cabinet will administer and implement LIHEAP in Kentucky within federal funds and any state appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, January 13, 2009)

201 KAR 2:105. Licensing and drug distribution requirements for wholesale distributors [drug manufacturers and wholesalers].

RELATES TO: KRS 315.010, 315.402, 315.406 [316.636, 24 C.F.R. 205.1-205.7]

STATUTORY AUTHORITY: KRS 315.010, [341.636, 315.191(1), 315.402, 315.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.402

and 315.406 [316.636] authorizes the board to promulgate administrative regulations to regulate wholesale distributors [drug manufacturers and wholesalers] of drugs. It also authorizes the board to require by administrative regulation, the maintenance of accurate records of all drugs manufactured, received and sold. This administrative regulation establishes the requirements for the registration of wholesale distributors [manufacturers and wholesalers].

Section 1. Definition. "Drug sample" means unit of prescription drug that is not intended to be sold and is intended to promote the sale of the drug [Definition]. (1) "Blood" means whole blood collected from a single donor and processed other than for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" is defined by KRS 315.010(4).

(5) "Prescription drug" is defined by KRS 315.010(21).

(6) "Wholesale drug distribution" means the distribution of legend drugs to persons other than consumers or patients and excludes a common carrier or individual retained solely to transport prescription drugs and the lawful distribution of prescription drug samples by manufacturers or their representatives, but shall not include the sale, purchase, or trade of a legend drug or offer of same.

(a) By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;

(b) By hospitals or other health care entities under common control;

(c) To alleviate emergency medical necessity or temporary shortage between pharmacies;

(d) By a pharmacist dispensing pursuant to a valid prescription order;

(e) By intracompany sale; or

(f) By blood banks.

(7) "Wholesaler" is defined by KRS 315.010(26).

Section 2. Requirements. (1) A wholesale distributor engaged in wholesale distribution in the Commonwealth [wholesale distributor] shall apply for a license [permit] from the board in accordance with KRS 315.402, 315.406 [316.636] and this administrative regulation.

(2) A separate license [permit] shall be required for each wholesale distributor's facility that distributes within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensed [permit holder] shall not be required to obtain a license [permit] under this section when the agent or employee is acting in the usual course of business or employment.

(4) A license [permit] shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Physical separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled merchandise until they are destroyed or returned;

(c) Providing accurate and precise records of all goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction; and

(d) Providing proof of registration with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and shall comply with all DEA regulations. (e) The Kentucky Board of Pharmacy may choose to adopt administrative regulations to include out of state distributors or may retrospectively accept lieu thereof licenses valid by a comparable authority equally recognizing Kentucky's requirements.

Section 3. Qualifications for License[Permit]. (1) The minimum qualifications shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples or wholesale retail drug distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the wholesale [manufacture or] distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with wholesale [drug manufacturer or] distribution;

5. Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for wholesale [manufacture or] distribution of any drugs, including controlled substances;

6. Compliance with the requirements under any previously granted license or permit, if any; and

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license [permit] to an applicant if it determines that the granting of that license [permit] would not be in the public interest based on health and safety considerations.

(2) A license [permit] shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drug; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) A permitted manufacturer or wholesaler may sell or distribute federal legend drugs only to the following:

(a) A currently-licensed manufacturer;

(b) A currently-licensed wholesaler;

(c) A currently-licensed pharmacy;

(d) A currently-licensed practitioner.
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(e) A currently licensed hospital, but only for use by or in that hospital;
(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes;

(4) A license issued pursuant to this administrative regulation may be suspended or revoked for failure to comply with the provisions of KRS 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412 [KRS 316.936] or this administrative regulation.

Section 4. Application, Fees, Renewals. (1) An application for a license[permit] shall be submitted to the Board of Pharmacy on "Application for a License to Operate as a Wholesale Distributor of Wholesale [Manufactured] [KBP W 8.03(WM 8.02)]."

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2.050.

(3) An application shall include:
(a) The name, full business address, and telephone number of the licensee;
(b) All trade or business name used by the licensee;
(c) All addresses, telephone numbers, and the names of contract persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;
(d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship);
(e) The name(s) of the owner and/or the operator of the licensee; and
(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs.

(4) All licenses[permits] shall (a) Expire on September 30 following date of issuance; and
(b) Be renewable annually thereafter upon renewal[renewal] application accompanied by the renewal fee set forth in 201 KAR 2.050 and shall be nontransferable.

Section 5. Standards. (1) Facilities.
(a) All buildings in which legend drugs are held for wholesale distribution[wholesale], repackaged, stored, held, sold, offered for sale, processed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.
(b) Buildings shall meet all applicable federal, state, and local standards. The facility shall have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.
(c) A facility shall not be located in a residence.
(2) Security.
(a) A wholesale distributor [drug-distributor-center] shall be equipped with an alarm system to detect entry after hours.
(b) A wholesale [drug] distributor shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.
(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where legend drugs are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.
(d) A [licensee] permit holder shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs. [e] Lists of officers, directors, managers, and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purposes of review.
(3) Recordkeeping.
(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and readily available for inspection or photocopied by authorized law enforcement officials for a period of two (2) years following disposition of the drugs. These records shall include:
1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;
2. The identity and quantity of the drugs received and distributed or disposed of; and
3. The dates of receipt and distribution or other distribution of the drugs.
(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the inspection period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
(4) Written policies and procedures.
(a) A Wholesale Distributor[Wholesale] [drug] distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and to assure that the wholesale [drug] distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These [such] crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.
(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.
(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale [drug] distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.
(d) There shall be written policies and procedures by which the wholesale[wholesale-drug] distributor exercises control over the shipping and receiving of all stock within the operation.
(5) Returned, damaged, and outdated prescription drugs. A wholesale distributor[operation] shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods. When conditions or circumstances make it necessary to return the drugs (i.e., the batch containing the drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned to the supplier), unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale [drug] distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.
(6) Handling recalls. A wholesale distributor[operation] shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:
(a) Any voluntary action on the part of the manufacturer;
(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and
(c) Replacement of existing merchandise with an improved product or new package design.
(7)(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.
(b) Procedures for distribution of approved stock shall provide
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for a rotation whereby the oldest inventory is distributed first.

(c) A wholesale [drug] distributor shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 267, 210, and 211 of the Code of Federal Regulations.

Section 6. Pedigree. (1) Effective July 1, 2009, and in accordance with KRS 315.400(3)(h)(1), each person or entity engaged in the wholesale distribution of prescription drugs that leave or that have ever left the normal distribution channel shall, prior to the distribution of the prescription drug, provide a pedigree to the person receiving the prescription drug.

(2) The pedigree shall include the following information concerning the prescription drug:

(a) The proprietary and established name of the prescription drug;

(b) The dosage;

(c) The size of the container;

(d) The number of containers;

(e) The lot number of control number of the prescription drug;

(f) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

(g) The date of each previous transaction.

(3) Pedigree records shall be maintained and readily be available for inspections or photocopying by authorized law enforcement officials for a period of 20 years. [Pharmacist-in-charge: A pharmacist-in-charge is a pharmacist-in-charge of the facility who shall be responsible to the board for security and recordkeeping. The pharmacist-in-charge shall review the security and recordkeeping of the on-site inspection at least once a month and recording the results of these inspections in the policy and procedure manual.]

Section 7. Violations. (1) A wholesale distributor [drug manufacturer or wholesaler] shall not distribute legend drugs directly to a consumer or a patient or operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the license.

Section 8.[9] Incorporation by Reference. (1) "Application for a License to Operate as a Wholesale Distributor of Drug Wholesaler or Manufacturer" (KBP W 0 0181M-0) is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511 (203-3751), Monday through Friday, 8 a.m. to 4:30 p.m.

W. MICHAEL LEAKE, President
APPROVED BY AGENCY: November 14, 2008
FILED WITH LRC: December 12, 2008 at 10 a.m.
CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2820, fax (859) 246-2823.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended at ARS, January 13, 2009)

301 KAR 1:125. Transportation of fish.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.180, 150.225, 150.429(1)(8), C.F.R. 73.10-99

STATUTORY AUTHORITY: KRS 13A.350, 150.025(1)(c), (1)(h), 150.190(6), 150.235, EO 2008-516

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)c authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and 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 provides for the control of the transportation of fish, fish eggs, live ball, and other aquatic organisms into, through, and within the state in order to protect the resident fish population. [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) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primary authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(3) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth. [does not include fish used in aquaculture, the bait industry, or fish sold for stocking in Kentucky.]

(4)(3) "Certified VHS free facility" means a fish-rearing facility that has been certified (by APHIS then by VHS) free by an APHIS approved laboratory.

(5)(4) "Ice-binding fish" means pike, fish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(6)(5) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(7)(6) "VHS positive state" means any state of the United States, or any Canadian province, listed on the APHIS Web site www.aphis.usda.gov/afvs-established-in-9-C.F.R.-71, 83, and 93(1) by APHIS as being positive for Viral Hemorrhagic Septicemia (VHS).


Section 2, Fish Transportation Permit is not needed:

(1) By an individual to transport aquatic species; (2) By permitted Kentucky fish clarifiers as established in 301 KAR 1:115, except (if [when] transporting fish into Kentucky from another state or country,

(3) By individuals with a sport or commercial fishing license to transport legally caught fish in fish;

(4) By individuals (that are) transporting fish purchased from a licensed live bait dealer for stocking in private waters;

(5) By agents of the department while performing their normal duties;

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 3, Live Fish, [Eggs,] Live Bait, or Other Aquatic Organisms (1) All individuals, corporations, or other business entities that transport any live fish, [hatched-fish-eggs] live bait as defined in 301 KAR 1:132, Section 2, or other live aquatic organism, [except those individuals listed in Section 2 of this administrative regulation,] in or through Kentucky shall have in possession a (a) Fish Transportation Permit issued in the name of the individual, corporation, or other business entity transacting the business; and

(b) Bill of lading showing the origin and destination of the organisms being transported;

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, (must also be in possession) if the organisms shall [are to be] sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and [is not] prohibited species listed in 301 KAR 1:132 shall not be present.

(4) If any VHS-regulated fish species from a VHS positive state are transported (the live-fish or hatched-eggs being transported) and unbanded in Kentucky, [are from a known VHS-positive state], in addition to the requirements established in subsections (1), (2), and (3) of this section, Sections 2(1) and (2) and (3) of this administrative regulation, the following requirements shall (also) apply:
(a) If the origin of the VHS-regulated fish species [live fish or fertilized eggs] is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free (as defined in 301 KAR 1:155).

(b) If the origin of the VHS-regulated fish species [live fish or fertilized eggs] is from a non-certified VHS free facility, then:

1. The VHS-regulated fish species [live fish or fertilized eggs] shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory.

2. The individual shall possess a copy of the APHIS VS 1:27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal agency as approved by the state or federal office shall be in possession.

3. Water from the fish or the living organisms shall not be discharged into a municipal sewage system that includes waste water disinfection or into [a] discharging settling pond devoid of fish for a settling pond that disinfects according to all EPA standards.

(3) If the origin of the VHS-regulated fish species [live fish or fertilized eggs] are from a known VHS positive state and are only being transported through Kentucky then only in addition to the requirements established in subsections (1) and (3) of this section [(Sections 3(1) and (2))] and [Section 4 of this administrative regulation (the following requirements) shall also apply]:

(a) No live fish or eggs shall be unloaded in Kentucky; and

(b) No water shall be discharged or exchanged while in Kentucky.

(4) VHS-regulated fish species [live fish or fertilized eggs, live bait, or other aquatic organisms] being transported from a known VHS positive state into, within, or through Kentucky do that not meet all requirements established in Sections 3 and 4 of this administrative regulation shall [Section 3(1), (2), (3), and 4 may be] confiscated for disposal purposes.

Section 4. Fish Transportation Permit Application. (1) If an individual, corporation, or other business entity [who] wants to transport fish, fish eggs, live bait, or other aquatic organisms into, within, or through Kentucky they first shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 3:022.

(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they shall [also] submit:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species [or fertilized eggs] are coming from is certified as being VHS free.

(b) Copy of the APHIS VS 1:27 permit if the facility is not certified as being VHS free.

(3)(b) An individual, corporation, or other business entity shall not transport fish, [fish eggs], live bait, or other aquatic organisms into, within, or through Kentucky without [and] an approved Fish Transportation Permit is in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit [or] (2) Prior to transporting any live fish or fertilized eggs into or through Kentucky from a facility in a known VHS-positive state that is not listed on an issued Fish Transportation Permit the permittees shall:

(a) Notify the department; and

(b) By approved or the commissioner based on risk of contamination to fish of the Commonwealth be sent an updated Fish Transportation Permit listing the approved facility.

Section 5. Transportation of Roe-Bearing Fish and Roe. (1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established (defined) in 301 KAR 1:155 into, within, or through Kentucky shall have possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester’s name and commercial fishing license and roe-bearing harvester’s permit number listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155. Section 4(4)(d).

Section 6. All officers and agents of the department have the authority to demand of the transporter, at any time, that [all] prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses [are] present and proof that all appropriate permits and documentation [are] in possession.

Section 7. Fish Transportation Permit Revocation and Nonrenewal. (1) The Department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:

(a) Falsify the documentation needed [in possession] to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit;

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(2) An individual, corporation, or other business entity whose Fish Transportation Permit has been denied, revoked, or not renewed may request an administrative hearing pursuant to KRS Chapter 13B.

Section 8. Incorporated by Reference. (1) "Application for Fish Transportation Permit", 2008 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Section 1. All individuals, corporations, or other business entities who transport any live fish, live bait (as defined in 301-KAR-1:120) or other live aquatic organisms into, within, or through the Commonwealth of Kentucky must have a transportation permit issued in the name of the individual, corporation, or other business entity transecting the business.

Section 2. All officers and agents of the Department of Fish and Wildlife Resources have the authority to demand, at any time, proof by the transporter that:

(1) An appropriate transportation permit or exact copy, listing the species, is in possession;

(2) An appropriate live fish and bait dealers’ licenses has been issued; and the organisms are to be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of the Commonwealth.

(3) The organisms in transport are free of disease and that no prohibited species listed in 301 KAR 1:122 are present.

(4) That a bill of lading showing the origin and destination of all of the organisms being transported is in possession.

BENJY KNIMAN, Acting Deputy Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: November 19, 2006
FILED WITH LRC: December 9, 2008 8 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, January 13, 2009)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180(1)(6)(d), 150.340, 150.360, 150.370(4)(e), 150.399, 150.400, 150.410, 150.990

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STATUTORY AUTHORITY: KRS 150.025, 150.120(4)(1)(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(4) authorizes the department to establish hunting seasons and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. The administrative regulation is necessary to ensure the permanent and continued supply of furbearer species by protecting them from overharvest.
EO 2008-515, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.
(2) "Dry land set" means a trap not set to drown an animal upon capture.
(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws that close upon an animal's foot.
(4) "Furbearers" mean mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels, river otter, bobcat, coyote, and striped skunk.
(5) "Hunter" means a person hunting furbearers with gun, gun and dog, bow and arrow, or by falconry.
(6) "Modern gun deer season" means the season established by 301 KAR 2:122.
(7) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device which is not power or spring assisted.
(8) "Nonlocking snare" means a trap consisting of a wire, cable, or string-loop without a device to keep the loop from loosening.
(9) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section.
(1) Raccoon and opossum:
(a) Hunting - November 1 through [noon] the last day of February. During the modern gun deer season, a raccoon or opossum hunter shall not:
1. Take raccoons or opossums during daylight hours; or
2. Carry a gun except a 22 caliber rimfire gun, except as provided by KRS 237.110.
(b) Trapping - noon the third day of the modern gun deer season through [noon] the last day of February.
(2) Coyote:
(a) Hunting year round.
(b) Trapping noon the third day of modern gun deer season through [noon] the last day of February.
(3) Bobcat:
(a) Hunting noon the third Saturday in November through January 31.
(b) Trapping noon the third day of the modern gun deer season through [last day of February](January 31).
(4) All other furbearers: noon the third day of the modern gun deer season through [noon] the last day of February.
(5) Furbearers taken by falconry: September 1 through March 30.
(6) There shall not be a closed season on:
(a) Chasing and gray foxes during daylight hours for sport and not to kill; and
(b) Chasing raccoons or opossums for sport and not to kill.
(7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a hunting or trapping license. Statewide requirements and bag limits apply.

Section 3 Bag Limits. (1) There shall not be a bag limit on furbearers except bobcats, river otters, and those taken by falconry.
(2) A person shall not take more than five (5) bobcats per season; only three (3) bobcats may be taken with a gun.
(3) A person shall not take more than six (6) river otters per season.

(4) A falconer hunting within the falconry season but outside the dates specified in Section 2(1) through (4) of this administrative regulation shall not take more than two (2) of any fur bearer.

Section 4. Legal Hours of Take. A person shall not take furbearers by hunting except during the times specified in this section.
(1) Furbearers: daylight hours only, except raccoon and opossum.
(2) Raccoon and opossum: day or night, except that a person shall not take raccoons or opossums during daylight hours during the modern gun deer season.

Section 5. Use of Calls. A hunter may use a hand- or mouth-operated call, electronic call or attracting device.

Section 6. A hunter shall not carry buckshot while hunting, except as authorized by KRS 237.110 [possess buckshot].

Section 7. Raccoon and Opossum Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.
(2) Except as specified in subsection (3) of this section, a person chasing raccoon or opossum from noon, March 1 through October 31 shall not use or carry a:
(a) Firearm or concealed deadly weapon unless authorized by KRS 237.110 (Gun);
(b) Singshot;
(c) Tree climber;
(d) Squeezer, or
(e) Similar device capable of killing, injuring or forcing a raccoon or opossum from a tree or den.
(3) A person participating in a department-approved raccoon dog trail sanctioned by one (1) of the following organizations may use a squeezer:
(a) The American Coon Hunters Association;
(b) The American Kennel Club/AmERICAN COON HUNTERS ASSOCIATION;
(c) The National Kennel Club;
(d) The Professional Kennel Club;
(e) The United Coon Hunters Association; and
(f) The United Kennel Club.

Section 8. Trapping Methods. (1) A person trapping on dry land shall not:
(a) Set traps closer than ten (10) feet apart; or
(b) Use a trap except:
1. Deadfall;
2. Wire cage or box trap;
3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;
4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger;
5. A nonlocking snare.
(2) There shall be no restrictions on a trap or snare used as a water set.
(3) A trap or snare shall not be set in a trail or path commonly used by a human or a domestic animal.
(4) A trapper may use lights from a boat or a vehicle.

Section 9. Harvest Recording. Immediately after taking a river otter or bobcat, a person shall:
(1) Record, in writing, the species, date taken, county where taken, and sex of the river otter or bobcat before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:
(a) Hunter's log section on the reverse side of a license or permit;
(b) Hunter's log produced in a hunting guide;
(c) Hunter's log printed from the Internet;
(d) Hunter's log available from any KDPS agent or
(e) An index card or reasonable facsimile thereof; and
(2) Retain the completed hunter's log in his possession whenever the hunter is in the field during the current season.
Section 10. Checking a River Otter or Bobcat. (1) A person shall check a harvested river otter or bobcat by:
(a) Calling the toll-free number listed in the current fall hunting and trapping guide on the day the river otter or bobcat is harvested;
(b) Providing the information requested by the automated check-in system; and
(c) Writing the confirmation number given by the system on the hunter’s log described in Section 5(10) of this administrative regulation.

(2) If a harvested river otter or bobcat leaves the possession of a hunter and does not have a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag attached to it, the hunter shall attach a handmade tag, which contains the confirmation number, hunter’s name, and a phone number, to the carcass.

(3) A person shall not knowingly provide false information when completing the hunter’s log, checking a river otter or bobcat, or creating a carcass tag.

(4) A person wishing to sell a river otter or bobcat pelt to a licensed fur processor, fur buyer, or for export shall call the department’s toll-free information number and request a CITES tag by providing:
(a) A valid confirmation number as described in subsection (1) of this section; and
(b) A street address where the tag is to be mailed.

(5) The CITES tag shall be attached to the skin or unskinned carcass per the instructions provided and remain with the pelt until processed.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.

Section 11. Transporting and Processing River Otter or Bobcat. (1) A person shall:
(a) Have proof that a river otter or bobcat or parts brought into Kentucky were legally taken;
(b) Not sell river otter or bobcat parts except to a licensed:
1. Fur buyer;
2. Fur processor; or
3. Taxidermist.

(2) A taxidermist or other individual who commercially processes river otters and bobcats shall:
(a) Not accept river otter or bobcat carcasses or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 10(10) of this administrative regulation; and
(b) Keep accurate records of the hunter’s name, address, confirmation or CITES tag number, and date received for each river otter or bobcat in his possession.

BENJY KINMAN, Deputy Acting Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 15, 2008 at 11 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, January 13, 2009)

301 KAR 2:300. Black bears.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.180, 150.300, 150.305, 150.340, 150.360, 150.370, 150.395, 150.390, 150.392, 150.393, 150.394, 150.395.4, 150.397.

STATORIARY AUTHORITY: KRS 150.025, 150.120(4), 150.390.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 and 150.390 authorize[authorizes] the department to promulgate administrative regulations governing hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose[ purposes] of KRS Chapter 150[—including the management and conservation of wildlife]. This administrative regulation establishes the hunting season, prescribes legal methods of taking, and establishes harvest reporting requirements for black bear hunting [the prohibitions regarding the taking of black bears and pursuing black bears with dogs in the Commonwealth]. EO 2009-516, effective June 18, 2008, recognizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.
(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.
(3) "Arrow" means the projectile fired from a bow or crossbow.
(4) "Baited area" means an area where feed, grans, or other substances capable of luring black bears have been placed.
(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.
(6) "Bear" means the species Ursus americanus.
(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) black bear of either sex.
(8) "Bear zone" means the following Kentucky counties: Harlan, Letcher, and Pike.
(9) (c) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.
(10) (3) "Cruel" means the species Ursus americanus.
(9i) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.
(11) (3) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.
(3) (1) "License year" means the period from March 1 through the following last day of February.
(13) "Modern gun" means a rifle, handgun, or shotgun which is fired from the rear of the barrel.
(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun which is loaded from the discharging end of the barrel or discharging end of the receiver.
(15) "Shotted" means ammunition discharged from a shotgun.
(16) "Bear permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) either-sex bear.
(17) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding and Pursuing Black Bears. A person shall not:
(1) Engage in any direct or indirect feeding of black bears; or
(2) Pursue or chase black bears with dogs.

Section 3. License and Bear Permit Requirements. (1) A bear permit[permits] may only be purchased by a resident[resident] of Kentucky; and
(2) Unless exempted by KRS 150.170, a person hunting bear shall have a valid Kentucky hunting license and valid bear permit while hunting.

Section 4. Bear Damage Control. The department may authorize department personnel to remove or destroy a bear causing property damage. A person authorized to destroy a bear causing damage shall not:
(1) Move the bear without attaching a disposal permit provided by the department to the carcass; and
(2) Remove the disposal permit until the carcass is processed.

Section 5. Hunter Restrictions. (1) A bear hunter:
(a) Shall not harvest bear except during daylight hours;
(b) Shall not use dogs, except leashed tracking dogs may be
used to recover wounded bears;
(c) Shall not hunt bear on a beated area;
1. While bait is present; or
2. For thirty (30) days after the bait has been removed.
(d) Shall not harvest:
1. A female bear that has a cub; or
2. A bear that weighs less than seventy-five (75) pounds [female—bears, with~cubs~or~bears~less~than~seventy-five~(75) pounds in weight];
(e) Shall not harvest a bear that is swimming (take swimming bears); and
(f) Shall not harvest a bear if the hunter is in a vehicle, boat or on horseback (take bears from a vehicle, boat, or while on horseback), except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.
(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 6. Weapon Restrictions. (1) A bear hunter shall not use or carry, except as provided by KRS 237.110(8) possess, while hunting:
(a) A device capable of taking a bear except a firearm, crossbow, or archery equipment;
(b) A modern firearm less than 270 caliber;
(c) A muzzle-loading firearm less than .50 caliber;
(d) A shotgun less than twenty gauge;
(e) Rimfire ammunition;
(f) A fully automatic weapon;
(g) A firearm with a magazine capacity greater than ten (10) rounds;
(h) Steel-jacketed ammunition;
(i) Tracer bullet ammunition;
(j) A shotgun containing more than one (1) projectile;
(k) A broadhead smaller than seven-eighths (7/8) inch wide;
(l) A barded broadhead;
(m) A crossbow without a working safety device;
(n) A chemically treated arrow; and
(o) An arrow with a chemical attachment.
(2) A handgun used to hunt bear shall have a barrel length of at least six (6) inches, have a bore diameter of at least .220 inches (220 caliber), and when fired, the bullet shall produce at least 500 ft/ls of energy at 100 yards.
(3) A person authorized to carry a concealed weapon pursuant to KRS 227.110, shall not use that firearm to harvest a bear unless that firearm conforms to the provisions of subsection (1) of this section.

Section 7. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest.
(2) Requirements in this section shall not apply to a person:
(a) Hunting waterfowl;
(b) Hunting fur bearers at night during a legal furbearer season.
(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:
(a) May display a small section of another color; and
(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 8. Bear Zone Season Dates and Bag Limits. (1) A person shall only harvest a bear (bear) in the Bear Zone.
(2) A hunter may take bear using weapons described in Section 4 of this administrative regulation for two (2) consecutive days beginning the third Saturday in December, effective December 2009.
(3) A person shall not take more than one (1) bear in a license year.

Section 9. Bear Quota and Season Closure. (1) The bear season shall close on the day when the quota of:
(a) Ten (10) bears have been harvested or
(b) Five (5) female bears have been harvested.
(2) A bear hunter shall [All bear hunters must] call 1-800-858-1549 after 9 p.m., each day of the legal bear season to determine if the annual quota has been reached.

Section 10. Bear Sanctuaries. (1) The following areas within the Bear Zone shall be closed to bear hunting:
[a][3][Hensley-Pine Mountain Wildlife Management Area [shall be closed to bear hunting]; and
[b][3][The area surrounding Hensley-Pine Mountain Wildlife Management Area [area shall be closed to bear hunting]; starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds west along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds east along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 453 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.
(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area referenced in subsection (b) of this section.

Section 11. Harvest Recording and Check-in Requirements. Immediately after harvesting a bear, and before moving the carcass (take a bear), a person shall:
(1) Record in writing the:
(a) Species taken;
(b) The date taken;
(c) The county where taken; and
(d) Sex of the bear before moving the carcass from the site where taken.
(2) This information shall be recorded on a hunter's log.
(3) Retain the completed hunter's log in possession whenever the hunter is in the field during the current season.
(4) A successful bear hunter shall register a harvested bear at a department operated check in station immediately after leaving the field. Before leaving the check in station, a successful hunter shall check the Successful hunters shall register harvested bears at a department operated check in station immediately after leaving the field. Before leaving the check in station, successful hunters shall telecheck their bear by calling 1-800-245-3263 and record the confirmation number on a hunter's log.
(5) After registering a bear, the hunter shall attach a tag issued by the department, to the carcass.(4) After registering a bear, hunters shall attach to the carcass a tag issued by the department.

BENJ KINNAM, Acting Deputy Commissioner,
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(As Amended at ARRS, January 13, 2009)

401 KAR 11:010. Board of Certification.

RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

- 1746 -
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. This administrative regulation establishes the duties of the Kentucky Board of Certification of Wastewater System Operators.

Section 1. Duties of the Board. The board shall:
(1) Evaluate the qualifications of applicants and recommend qualified applicants to the cabinet for certification examination;
(2) Review and provide comments to the cabinet on proposed administrative regulations regarding operator certification;
(3) Review and make recommendations to the cabinet on core content for certification examinations and continuing education training for certification renewal;
(4) Review and make recommendations to the cabinet on training programs to provide continuing education to certified operators. During the evaluation of training courses and seminars, the board shall consider:
(a) The consistency of training material with the core content;
(b) The ability of the training to provide information that supports effective water conveyance, treatment, and quality; and
(c) The ability of the instructor to properly present the training;
(2) Assist the cabinet in drafting examinations for the certification of operators;
(5) Review and provide comments to the cabinet on proposed fees for the training and certification of operators;
(6) Review applications for reciprocity and recommend to the cabinet the acceptance or denial of the application based on the criteria established in KRS 401 KAR 10.050, Section 10(6); and
(7) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with KRS Chapter 224, 401 KAR Chapter 5, or this chapter.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 13, 2008
FILED WITH LRC: October 14, 2008 at 3 p.m.
CONTACT PERSON: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(As Amended at ARRS, January 13, 2009)

401 KAR 11:020. Standards of professional conduct for certified operators.

RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. This administrative regulation establishes standards for the performance of certified wastewater operator duties.

Section 1. Standards of Professional Conduct. (1) In order to safeguard the life, health, and welfare of the public and the environment and to establish and maintain a high standard of integrity in the certified operator profession, the following standards of professional conduct apply to persons certified in accordance with this chapter:
(a) A certified operator shall, during the performance of operational duties, protect the safety, health, and welfare of the public and the environment;
(b) A certified operator shall use reasonable care and judgment in the performance of operational duties;
(c) If a certified operator's judgment is overruled by an employer under circumstances in which the safety, health, and welfare of the public or the environment are endangered, the certi-
Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or telecommunications course should be categorized as a:

(a) Conceptual skills course;
(b) Human skills course; or
(c) Technical skills course.
(2) If a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.
(3) A law enforcement or telecommunications course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or telecommunicator who wishes to apply for a particular career step certificate shall:
(1) Complete a "CDP-1 Participant Commitment Form", which shall include the following:
(a) Applicant's name and agency;
(b) Social Security number and date of birth;
(c) The program to which the applicant wishes to commit;
(d) Signature of the applicant, and
(e) Signature of the applicant's agency head.
(2) Submit one (1) of the following application forms for the specific career development step for which the applicant wishes to apply:
(a) Intermediate Law Enforcement Officer;
(b) Advanced Law Enforcement Officer;
(c) Law Enforcement Officer Investigator;
(d) Law Enforcement Traffic Officer;
(e) Advanced Deputy Sheriff;
(f) Law Enforcement Supervisor (Supervisory);
(g) Law Enforcement Manager;
(h) Law Enforcement Executive;
(i) Basic Telecommunicator (Certificate);
(j) Intermediate Telecommunicator;
(k) Advanced Telecommunicator;
(l) Telecommunications Manager/Director; [or]
(m) Law Enforcement Training Officer;
(n) Law Enforcement Chief Executive;
(o) Law Enforcement Officer Advanced Investigator; [or]
(p) Crime Scene Processing Officer; or
(q) Telecommunications Supervisor-1.
(3) Include the following information on the application form:
(a) Applicant's name and agency;
(b) Social Security number and date of birth;
(c) Date of employment with current agency;
(d) Current rank or title and date of promotion to that position;
(e) Employment history;
(f) Training history;
(g) Educational history;
(h) Signature of program applicant; and
(g) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and
(4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed required:
(a) KLEC-approved or recognized courses; and
(b) College courses.

Section 4. In-service Training. College, Out-of-state Work Experience, Retroactive Credit. (1) The KLEC shall approve In-service training before it is applied toward a career development step. [All in-service training applied toward a career development step shall be approved or recognized by the KLEC.]
(2) A program participant shall not receive more than one (1) program credit for an In-service training course.
(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.
(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.
(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
(a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and
(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Two (2) years of experience and a bachelor's degree;
(b) Four (4) years of experience and an associate's degree;
(c) Four (4) years of experience and ninety-five (95) hours of college credit;
(d) Five (5) years of experience and eighty (80) hours of college credit;
(e) Six (6) years of experience and sixty-five (65) hours of college credit;
(f) Seven (7) years of experience and fifty (50) hours of college credit; or
(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:
(1) Complete the Intermediate Law Enforcement Career Step;
(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
(a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Four (4) years of experience and a master's degree;
(b) Six (6) years of experience and a bachelor's degree;
(c) Nine (9) years of experience and an associate's degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:
(a) Forty (40) hours of technical skills development courses;
(b) Forty (40) hours of conceptual skills development courses; and
(c) Eighty (80) hours in one (1) of the following options of courses:
   1. Academy of Police Supervision;
   2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or
   3. A KLEC-approved or recognized equivalent course; and
   (3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      (a) Two (2) years of experience and a master's degree;
      (b) Four (4) years of experience and a bachelor's degree;
      (c) Six (6) years of experience and an associate's degree;
      (d) Six (6) years of experience and ninety-five (95) hours of college credit;
      (e) Seven (7) years of experience and eighty (80) hours of college credit;
      (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
      (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Manager Certificate. To demonstrate proficiency in the Law Enforcement Manager Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Complete the:
   (a) Department of Criminal Justice Training Criminal Justice Executive Development Course;
   (b) Department of Criminal Justice Training School for Strategic Leadership;
   (c) Federal Bureau of Investigation (FBI) National Academy;
   (d) University of Louisville Southern Police Institute Administrative Officers Course;
   (e) Northwestern University School of Police Staff and Command;
   (f) Police Executive Leadership College; or
   (g) Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
   (3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:
      (a) Two (2) years of experience and a master's degree;
      (b) Four (4) years of experience and a bachelor's degree;
      (c) Six (6) years of experience and an associate's degree;
      (d) Six (6) years of experience and ninety-five (95) hours of college credit;
      (e) Seven (7) years of experience and eighty (80) hours of college credit;
      (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
      (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:
(a) Have active peace officer certification in accordance with KRS 15.386(2);
(b) Successfully complete:
   1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;
   2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
   3. Department of Criminal Justice Training School for Strategic Leadership;
   4. Three (3) police executive command courses, offered by the Department of Criminal Justice Training;
   5. Three (3) Current Leadership Issues for Mid-Level Executives (CLIMES) courses; or
   6. An executive level course as offered by the:
      a. Federal Bureau of Investigation (FBI);
      b. University of Louisville Southern Police Institute;
      c. Northwestern University School of Police Staff and Command;
      d. Institute of Police Technology and Management; or
      e. Institute for Law Enforcement Administration;
   (c) Successfully complete one (1) of the following:
      1. 120 hours of training in conceptual or human skills development;
      2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
   (d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      1. Two (2) years of experience and a bachelor's degree;
      2. Three (3) years of experience and sixty (60) hours of college credit; or
      3. Four (4) years of experience and thirty (30) hours of college credit.
(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Chief Executive Career Step, a peace officer shall:
(a) Successfully complete:
   1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;
   2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
   3. Department of Criminal Justice Training School for Strategic Leadership;
   4. Three (3) police executive command courses, offered by the Department of Criminal Justice Training;
   5. Three (3) Current Leadership Issues for Mid-Level Executives (CLIMES) courses; or
   6. An executive level course as offered by the:
      a. Federal Bureau of Investigation (FBI);
      b. University of Louisville Southern Police Institute;
      c. Northwestern University School of Police Staff and Command;
      d. Institute of Police Technology and Management; or
      e. Institute for Law Enforcement Administration;
   (b) Successfully complete one (1) of the following:
      1. 120 hours of training in conceptual or human skills development;
      2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
   (c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
      1. Two (2) years of experience and a bachelor's degree;
      2. Three (3) years of experience and sixty (60) hours of college credit; or
      3. Four (4) years of experience and thirty (30) hours of college credit.
(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:
   (a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and
   (b) 120 training hours in investigative courses identified by the
KLEC; and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Four (4) years of experience and a master's degree;
(b) Six (6) years of experience and a bachelor's degree;
(c) Nine (9) years of experience and an associate's degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Officer Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Complete 200 hours of in-service training, consisting of:
(a) Eighty (80) hour basic accident investigation course or a KLEC-approved equivalent; and
(b) 120 training hours in traffic courses identified by the KLEC;
and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Four (4) years of experience and a master's degree;
(b) Six (6) years of experience and a bachelor's degree;
(c) Nine (9) years of experience and an associate's degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
(a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;
(b) Forty (40) hours shall be in technical skills development; and
(c) Forty (40) hours shall be in human skills development, and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Two (2) years of experience and a bachelor's degree;
(b) Four (4) years of experience and an associate's degree;
(c) Four (4) years of experience and ninety-five (95) hours of college credit;
(d) Five (5) years of experience and eighty (80) hours of college credit;
(e) Six (6) years of experience and sixty-five (65) hours of college credit;
(f) Seven (7) years of experience and fifty (50) hours of college credit; or
(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall successively complete the following courses:
(1) Twenty-four (24) hours of emergency medical dispatch;
(2) Forty (40) hours of basic telecommunications;
(3) Eight (8) hours of Crisis Negotiation;
(4) Eight (8) hours of family violence;
(5) Spanish for the Telecommunicator; and
(6) Incident command.

Section 15. Intermediate Telecommunicator Certificate. To demonstrate proficiency in the Intermediate Telecommunications Career Step, a person shall:
(1) Complete the Basic Telecommunications Career Step;
(2) Complete the following courses:
(a) Eight (8) hours of customer service;
(b) Eight (8) hours of Teambuilding (developing high-performance teams);
(c) Sixteen (16) hours of cultural awareness; and
(d) Sixteen (16) hours of advanced emergency medical dispatch; and
(3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Three (3) years of experience and thirty (30) hours of college credit;
(b) Four (4) years of experience and twenty-five (25) hours of college credit;
(c) Five (5) years of experience and twenty (20) hours of college credit;
(d) Six (6) years of experience and fifteen (15) hours of college credit;
(e) Seven (7) years of experience and ten (10) hours of college credit; or
(f) Eight (8) hours of experience and five (5) hours of college credit.

Section 16. Advanced Telecommunicator Certificate. To demonstrate proficiency in the Advanced Telecommunications Career Step, a person shall:
(1) Complete the Intermediate Telecommunications Career Step;
(2) Complete the following courses:
(a) Forty (40) hours of communications training officer; and
(b) An eight (8) hours KLEC-approved telecommunications ethics course;
(3) Complete eight (8) hours of elective courses from any telecommunications course approved by the KLEC; and
(4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Four (4) years of experience and forty-five (45) hours of college credit;
(c) Five (5) years of experience and forty (40) hours of college credit;
(d) Six (6) years of experience and thirty-five (35) hours of college credit;
(e) Seven (7) years of experience and thirty (30) hours of college credit;
(f) Eight (8) hours of experience and twenty-five (25) hours of college credit; or
(g) Nine (9) years of experience and twenty (20) hours of college credit.

Section 17. Telecommunications Supervisor Certificate. To demonstrate proficiency in the Telecommunications Supervisor Career Step, a person shall:
(1) Complete the Basic Telecommunications Career Step;
(2) Successfully complete:
(a) The forty (40) hour Telecommunications Supervisor Ba-
Section 18. Telecommunications Director/Manager Certificate. To demonstrate proficiency in the Telecommunications Director/Manager Career Step, a person shall:

1. Obtain the Telecommunications Supervisor Certificate;
2. Successfully complete:
   (a) The forty (40) hour Telecommunications Executive Development course; or
   (b) Forty (40) hours of elective supervisory or management courses approved by the KLEC; and
3. Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Two (2) years of experience and a master's degree;
   (b) Four (4) years of experience and an associate's degree;
   (c) Five (5) years of experience and sixty (60) hours of college credit;
   (d) Six (6) years of experience and fifty-five (55) hours of college credit;
   (e) Seven (7) years of experience and fifty (50) hours of college credit;
   (f) Eight (8) years of experience and forty-five (45) hours of college credit;
   (g) Nine (9) years of experience and forty (40) hours of college credit;
   (h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 19. Law Enforcement Training Officer. To demonstrate proficiency in the Law Enforcement Training Career Step, a peace officer shall have:

1. Active peace officer certification in accordance with KRS 15.385(2);
2. Have successfully completed the following:
   (a) Intermediate Law Enforcement Officer Certificate;
   (b) Advanced Law Enforcement Officer Certificate; and
   (c) 120 hours of in-service training, which shall include:
      1. Police Training Officer course;
      2. Field Instructor course; and
      3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and
3. One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Four (4) years of experience and a master's degree;
   (b) Six (6) years of experience and a bachelor's degree;
   (c) Nine (9) years of experience and an associate's degree;
   (d) Eight (8) years of experience and 110 hours of college credit;
   (e) Nine (9) years of experience and fifty-five (55) hours of college credit;
   (f) Ten (10) years of experience and eighty (80) hours of college credit.

Section 20. Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:

1. Active peace officer certification in accordance with KRS 15.385(2);
2. Successfully completed the following:
   (a) Law Enforcement Officer Investigator Certificate; and
   (b) 150 hours of electives in Investigations courses approved or recognized by the Kentucky Law Enforcement Council; and
3. One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Four (4) years of experience and a master's degree;
   (b) Six (6) years of experience and a bachelor's degree;
   (c) Nine (9) years of experience and an associate's degree;
   (d) Eight (8) years of experience and 110 hours of college credit;
   (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
   (f) Ten (10) years of experience and eighty (80) hours of college credit.

Section 21. Crime Scene Processing Officer. To demonstrate proficiency in the Crime Scene Processing Officer career step, a peace officer shall have:

1. Active peace officer certification in accordance with KRS 15.385(2);
2. Successfully completed:
   (a) 200 hours of in-service training, which shall include:
      1. Crime Scene Investigations;
      2. Digital Photography; and
      3. Advanced Latent Fingerprints; and
   (b) One (1) of the following:
      1. Eighty (80) hours of electives in Investigations courses offered by the Department of Criminal Justice Training; or
      2. The Kentucky Criminalistics Academy or the National Forensic Academy; and
3. One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
   (a) Four (4) years of experience and a master's degree;
   (b) Six (6) years of experience and a bachelor's degree;
   (c) Nine (9) years of experience and an associate's degree;
   (d) Eight (8) years of experience and 110 hours of college credit;
   (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
   (f) Ten (10) years of experience and eighty (80) hours of college credit.

Section 22. Certificate of Completion. The KLEC shall issue a certificate and uniform label pin to a peace officer or telecommunicator upon completion of a career development step.
Section 24(24) Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Career Development Program Participant Commitment Form," KLEC Form CDP-1, (November 2008/August 2006) edition;
(b) "Intermediate Law Enforcement Officer", KLEC Form CDP-2, (August 2006) edition;
(c) "Advanced Law Enforcement Officer", KLEC Form CDP-3, (November 2008/August 2006) edition;
(d) "Law Enforcement Officer Investigator", KLEC Form CDP-4, (November 2008/August 2006) edition;
(e) "Law Enforcement Traffic Officer", KLEC Form CDP-5, (November 2008/August 2006) edition;
(f) "Advanced Deputy Sherriff", KLEC Form CDP-6, (November 2008/August 2006) edition;
(g) "Law Enforcement Supervisor", KLEC Form CDP-7, (November 2008/August 2006) edition;
(h) "Law Enforcement Manager", KLEC Form CDP-8, (November 2008/August 2006) edition;
(i) "Law Enforcement Executive", KLEC Form CDP-9, (November 2008/August 2006) edition;
(j) "Basic Telecommunicator", KLEC Form CDP-10, (November 2008/August 2006) edition;
(k) "Intermediate Telecommunicator", KLEC Form CDP-11, (November 2008/August 2006) edition;
(l) "Advanced Telecommunicator", KLEC Form CDP-12, (November 2008/August 2006) edition;
(m) "Telecommunications Supervisor", KLEC Form CDP-13, (November 2008/August 2006) edition;
(n) "Telecommunications Director/Manager", KLEC Form CDP-14, (November 2008/August 2006) edition; and
(o) "Law Enforcement Chief Executive", KLEC Form CDP-15, (November 2008/August 2006) edition;
(p) "Law Enforcement Training Officer", KLEC Form CDP-16, (November 2008/August 2006) edition;
(q) "Law Enforcement Officer Advanced Investigator", KLEC Form CDP-17, (November 2008) edition; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY BALL, Executive Director
For WILLIAM WALSH, Chair
APPROVED BY AGENCY: October 14, 2008
FILE WITH LRC: October 14, 2008 at 4 a.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (606) 622-3073, fax (606) 622-5027.

TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 13, 2009)

605 KAR 1:060. Temporary off-site sale or display event.

RELATES TO: KRS 186A 220(5), 190.030(7), (11). 190.035, 190.047

STATUTORY AUTHORITY: KRS 190.020, 190.030(1)(190.0471 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030(7) requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed place of business except that a motor vehicle dealer may have a temporary off-site sale or display of motor vehicles at a location other than the licensed place of business under certain conditions. KRS 190.030(1) authorizes the Motor Vehicle Commission to provide by administrative regulation for "other licensee activities and an appropriate fee[therefore]." This administrative regulation establishes the application requirements for holding a temporary sale or display event.

Section 1. Definition. "Display" means:
1. A showing of a motor vehicle or vehicles with an intent to attract or further a sale of the motor vehicle or vehicles or similar motor vehicles offered by a motor vehicle dealer at a location in this state where no sale, transfer, or test drive takes place; or
2. Any showing of a motor vehicle at a location for more than forty-eight (48) hours shall be deemed to be a showing with an intent to attract or further a sale of the motor vehicle or vehicles or similar motor vehicles offered by a motor vehicle dealer and shall require a permit.

Section 2. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle [sale-or] display event at any location other than the dealer's licensed place of business unless an Application for a Temporary [Sale-or] Display Event is filed with the Motor Vehicle Commission and approved.

(2) The application for a Temporary Display Event shall be received a minimum of five (5) days prior to the next regularly-scheduled meeting of the commission held before the requested permit period.

(3) The temporary [sale-or] display permit application shall state:
(a) The duration of the display (in days) which shall not exceed six (6) days or twenty-four (24) hours;
(b) The specific location of the temporary [sale-or] display event for which the permit is requested;
(c) A complete list of all motor vehicle dealers participating in the temporary display event;
(d) Proof that the city, county, urban county or consolidated local government where the temporary [sale-or] display event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary [sale-or] display event in its jurisdiction at a location other than the dealer's licensed place of business.
(e) All dealer shall not be present at a temporary display event at any time. If a salesman of the participating motor vehicle dealer is present at the temporary display event, the [sale-or] event shall be deemed a temporary sale event.

(5) The dealership's name as stated on its license, the address of its established place of business and contact information shall be posted on or near the vehicle or vehicles on display.

Section 3. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle sale event at any location other than the dealer's licensed place of business unless an Application for a Temporary Sale Event is filed with the Motor Vehicle Commission and approved.

(2) The application for a Temporary Sale Event shall be received a minimum of forty-five (45) days prior to the temporary sale event.

(3) The temporary sale event application shall state:
(a) The duration of the sale which shall not exceed five (5) successive days;
(b) The specific location of the temporary sale event for which the permit is requested;
(c) A complete list of all motor vehicle dealers participating in the temporary sale event;
(d) Proof that the city, county, urban county or consolidated local government where the temporary sale event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary sale event in its jurisdiction at a location other than the dealer's licensed place of business.
(e) That the temporary sale event has been, is being, or will be advertised as being temporary in nature;
(f) That the temporary sale event shall include a representative sampling of the inventory of the participating dealer or dealers; and
(g) In the case of a sale of new motor vehicles:
1. That the sale location is not within a five (5) mile radius of the licensed location of a nonparticipating new motor vehicle dealer.
labeled to sell the same line make of motor vehicles as will be displayed at the temporary sale event; and
2. That the applicable franchisor or franchisor's have approved or consented to the temporary sale event if such consent is required.

Section 4. (1) At every temporary sale event each participating dealer shall display a sign easily visible from the street identifying his business using his business name as stated on his dealer's license and indicating the address of his established place of business as set forth in his dealer's license.
(2) The sign shall be visible for at least six (6) months after the sale and shall not exceed the size of the motor vehicle commission on request.

Section 5. (1) At every temporary sale event shall be evidenced by a written sales document or purchase order containing the dealership's licensed name and address of the dealership's established place of business, the address of the temporary sale and the customer name, address and telephone number.
(2) The sales contract shall be retained for six (6) months after the sale and shall be made available to the Motor Vehicle Commission on request.

Section 6. A certificate of title, and other documents if appropriate, shall be present at the temporary sale event location with respect to each motor vehicle offered for sale at the temporary sale event and shall not be held by the applicant for six (6) months after the sale.

Section 7. (1) At every temporary sale event involving new motor vehicles shall have a valid license issued by the Motor Vehicle Commission in the name of the participating dealer or dealers prior to contemplation of the sale event.
(2) All salespersons participating in or present at a temporary sale event shall have a valid Kentucky license in their possession and available for display at all times during the event.

Section 8. At no temporary sale event involving new motor vehicles shall not be allowed within a five (5) mile radius of the location of a participating new motor vehicle dealer licensed to sell the same line make as will be displayed at the temporary sale event.

Section 9. (1) Unless good cause is shown by the applicant, temporary display events shall not be approved for the same location or the same jurisdiction unless there is at least a twenty-four (24) hour period between the end of the last temporary display event held by the applicant and the beginning of the next temporary display event to be held by the applicant.
(2) Unless good cause is shown by the applicant, temporary sale events shall not be approved for the same location or the same jurisdiction unless there is at least a thirty (30) day period between the end of the last temporary sale event held by the applicant and the beginning of the next temporary sale event to be held by the applicant.
(3) That the temporary sale event has been, is being, or will be advertised as being temporary in nature; and
(4) That the temporary sale event shall include a representative sampling of the inventory of the participating dealers or dealers.

Section 10. (1) The fee for a temporary sale event permit shall be $500 ($100) per participating dealer and shall be paid when the application is submitted.
(2) If the application is only for a temporary display event the fee shall be twenty-five (25) dollars for each temporary display event.

Section 11. (1) Incorporation by Reference. (2) The application for Temporary Sale or Display Event, revised September 2008/March 2004, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Motor Vehicle Commission, 105 South Wabash Road, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (40622).

RAY COTRELL, Chairman
APPROVED BY AGENCY: September 9, 2008
FILED WITH LRC: September 11, 2008 at 9:45 a.m.
CONTACT PERSON: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 South Wabash Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 573-1003.

LABOR CABINET
Department of Workplace Standards
(As Amended at ARS, January 13, 2009)

803 KAR 2:300. General.

RELATES TO: KRS 338.061, 338.061, 29 C.F.R. 1910.3-1910.7
NECESSARY, FUNCTION, AND CONFORMITY. [EO 2008-72, effective June 16, 2008], established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including: a. All duties, functions, responsibilities, personnel, records, files, equipment, buildings, appropriations, allotments, and cash balances assigned to the former Department of Labor. b. The administrative regulations of the Kentucky Occupational Safety and Health Board; the Kentucky Labor Cabinet; and the Kentucky Occupational Safety and Health Board to promulgate occupational safety and health administrative regulations.

Section 1. Definitions. (1) *Act* means KRS Chapter 338.
(2) *Assistant Secretary of Labor* means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet [Commissioner of Labor, Kentucky Department of Labor, or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor].
(4) *Employee* is defined in KRS 338.015(2).
(5) *Employer* is defined in KRS 338.015(1).
(6) *Established federal standard* is defined in KRS 338.015(10).
(7) *National consensus standard* is defined in KRS 338.015(9).
(8) *Secretary of Labor* means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet [Commissioner of Labor, Kentucky Department of Labor, or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor].
(9) *Standard* is defined in KRS 338.015(3).
(10) *U.S. Department of Labor* means U.S. Department of Labor or Kentucky Labor Cabinet [Department of Labor], U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with...
the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation and requirements in Section 2 of this administrative regulation —]

[(1)] 29 C.F.R. 1910.3-1910.7, revised July 1, 2008[2006][—] and

Section 3. Purpose and Scope. The general industry standards established in 29 C.F.R. Part 1910 of the regulations of the Department of Labor shall apply to all employers, employees, and places of employment throughout the Commonwealth of Kentucky except if excluded by KRS 338.021.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.
CONTACT PERSON: David Stumbo, CHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, January 13, 2009)

603 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.66-1910.68
NECESSITY, FUNCTION, AND CONFORMITY: [ECO—2008-472, effective June 16, 2008—established the Labor Cabinet and assigned it to all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities.]

NECESSITY, FUNCTION, AND CONFORMITY: [ECO—2008-472, effective June 16, 2008—established the Labor Cabinet and assigned it to all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities.]

402 KAR 2:305. Occupational health and environmental controls.

STANDARDS AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: [ECO—2008-472, effective June 16, 2008—established the Labor Cabinet and assigned it to all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities.]

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet, or Labor Commissioner—General Labor, Department of Labor, Commonwealth of Kentucky, Commonwealth of Kentucky.
(2) "C.F.R." means Code of Federal Regulations.
(3) "Employee" is defined in KRS 338.015(2).
(4) "Employer" is defined in KRS 338.015(1).
(5) "U.S. Department of Labor" means Kentucky Labor Cabinet.
Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and the Records Services, General Services Administration:

(EH) 29 C.F.R. 1910.94-1910.98, revised as of July 1, 2008, and

Section 3. Occupational Noise Exposure. (1) Except as provided in subsections (2) to (4) of this section, general industry shall comply with 29 C.F.R. 1910.94 to 1910.98, revised as of July 1, 2008.

(2) (a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(1).

(b) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz shall be included in the audiometric tests for employees using audiometric equipment that allows all audiometric tests to include 8,000 Hz.

(3) (a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(4).

(b) Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms.

(4) (a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(ii).

(b) Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this check. Deviations of fifteen (15) decibels or greater shall require an exhaustive calibration.

(5) (a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(ii).

(b) An exhaustive determination shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3 6-1969. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this calibration.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

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<th>Frequency, Hz</th>
<th>Reference threshold level for TDH-39 earphones, dB</th>
<th>Sound level meter reading dB</th>
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TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

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<th>Reference threshold level for TDH-49 earphones, dB</th>
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J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.
CONTACT PERSON: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U S HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009
RELATES TO: KRS Chapter 338, 29 C.F.R. 1910 101 - 1910.126

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personal records, files, equipment, budgets, appropriations, allotments, and cash balances, assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338, 29 C.F.R. 1910.101 - 1910.126. The Commission has established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes necessary hazardous material standards to be enforced by the Department of Workplace Standards/Office of Occupational Safety and Health, Division of Compliance in the area of general industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet (the Commissioner of the Department of Labor, Commonwealth of Kentucky).

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1, this administrative regulation and the requirements established thereunder in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Administration: (14) 29 C.F.R. 1910.101 - 1910.126, revised July 1, 2008; and (15) The amendment to 29 C.F.R. 1910.403, 29 C.F.R. 1910.107, 29 C.F.R. 1910.110, and 29 C.F.R. 1910.111, all published in the December 14, 2007 Federal Register, Volume 72, Number 240 (72 Fed. Reg. 71029) and confirmed in the March 14, 2007 Federal Register, Volume 72, Number 61 (72 Fed. Reg. 13259). General industry shall comply with the requirements of 29 C.F.R. 1910.101 - 1910.126, revised as of July 1, 2006, so modified by the definitions in Section 1 and requirements in Section 3 of the administrative regulation.

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automatic service station, or service station, means that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, and accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

J.R. Gray, Secretary

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VOLUME 35, NUMBER 8 — FEBRUARY 1, 2009

Register, Volume 73, Number 51 (Fed. Reg. 13753).

Section 3 (Construction of Water Closets). (1)(a) Construction of Water Closets. The requirements relating to construction of water closets in paragraph (b) of this subsection (2)(a) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)).

(b)(2)(ii) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

(c)(2)(i) Lockout. (1)(i) The requirements relating to the utilization of lockout procedures in paragraph (b) of this subsection (2)(ii) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(ii).

(c)(2)(ii) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.

(c)(3) Full employee protection. The requirements relating to tag location in subsection (b)(3)(i) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(ii).

(c)(4) Full employee protection. When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. If tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.
CONTACT PERSON: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, January 13, 2009)

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061.
NECESSITY, FUNCTION, AND CONFORMITY:[EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Department of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance, and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.241 to 1910.248 establishes the federal requirements relating to hand and portable powered tools and other hand-held equipment. EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the former Department of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance, and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.251 to 1910.255 establishes the administrative regulation to be enforced by the Department of Workplace Standards in general industry. (This administrative regulation establishes the standards for hand-held equipment to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.)]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards. Labor Cabinet or Commissioner of the Department of Labor, Commissioner of the Office of Occupational Safety and Health, Commissioner of the Department of Labor, Commonwealth of Kentucky.
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined by KRS 338.015(2).
(5) "Employer" is defined in KRS 338.015(1).
(6) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Title 29, C.F.R. 1910.241-1910.248, revised July 1, 2008 [and]

Section 3. [[2]] An employer required by Section 1(1) of this administrative regulation to report information to the U.S. Department of Labor or a subsidiary thereof shall report the information to the Kentucky Labor Cabinet, Department of Workplace Standards, Department of Labor, Office of Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

J.R. GRAY, Secretary
APPROVED BY AGENCY: October 8, 2008
FILED WITH LRC: October 9, 2008 at 3 p.m.
CONTACT PERSON: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, January 13, 2009)

803 KAR 2:316. Welding, cutting, and brazing.


STATUTORY AUTHORITY: KRS 338.051(3), 338.061.
NECESSITY, FUNCTION, AND CONFORMITY:[EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the former Department of Occupational Safety and Health were assigned to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance, and a Division of Occupational Safety and Health Education and Training were created. KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.251 to 1910.255 establishes the
federal requirements relating to welding, cutting, and brazing. EQ 2008-472, effective June 15, 2008, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes the welding, cutting, and brazing standards to be enforced by the Department of Workplace Standards/Office of Occupational Safety and Health, Division of Compliance [in the area of general industry].

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet,[the Commissioner of the Department of Labor, Commonwealth of Kentucky].
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined in KRS 338.015(2).
(5) "Employer" is defined in KRS 338.015(1).
(6) "Standard" is defined in KRS 338.015(3).
(7) If Department of Labor means Kentucky Labor Cabinet, Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: [41](3) 29 C.F.R. 1910.251-1910.255, revised July 1, 2008[4](2)[2] and
(2) The amendment to 29 C.F.R. 1910.261 published in the
December 14, 2007, Federal Register, Volume 72, Number 240 (72 Fed. Reg. 71070) and confirmed in the March 14, 2007 Federal Register, Volume 76, Number 51 (72 Fed. Reg. 13753) General industry shall comply with the requirements of 29 C.F.R. 1910.261 through 1910.266, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation.

J.R. GRAY, Secretary

APPROVED BY AGENCY: October 8, 2008

FILED WITH LRC: October 9, 2008 at 3 p.m.

CONTACT PERSON: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
(As Amended at ARR, January 13, 2009)

IT all organizational entities associated with the former Department of Labor. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace Standards/Office of Occupational Safety and Health, Division of Compliance [in the area of general industry].

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet,[the Commissioner of the Department of Labor, Commonwealth of Kentucky].
(2) "C.F.R." means Code of Federal Regulations.
(3) "Employee" is defined in KRS 338.015(2).
(4) "Employer" is defined in KRS 338.015(1).
(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: [41](3) 29 C.F.R. 1910.261-1910.272, revised July 1, 2008[4](2)[2] and
(2) The amendment to 29 C.F.R. 1910.261 published in the
December 14, 2007, Federal Register, Volume 72, Number 240 (72 Fed. Reg. 71070) and confirmed in the March 14, 2007 Federal Register, Volume 73, Number 51 (72 Fed. Reg. 13753) General industry shall comply with the requirements of 29 C.F.R. 1910.261 through 1910.266, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this administrative regulation.

J.R. GRAY, Secretary

APPROVED BY AGENCY: October 8, 2008

FILED WITH LRC: October 9, 2008 at 3 p.m.

CONTACT PERSON: David Stumbo, OHST, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARR, January 13, 2009)

804 KAR 4:70. Entertainment destination center license.

RELATES TO: KRS 241.060(1), 243.030(41), (46), 243.040(18), 243.030(41)[46], 243.040(15)[16]

STATUTORY AUTHORITY: KRS 241.060(1), EQ 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.030(41) and 243.040(18) authorize the Alcoholic Beverage Control Board to issue an establishment destination license and any other special licenses the board finds necessary for the proper regulation and control of traffic in alcoholic beverages. EQ 2008-507, effective June 15, 2008, abolished the Environmental and Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control 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 an[-any] establishment licensed under KRS 243.050(4) and (5) as a convention center.

(3) Physical confinement[ion] of the center means:
(a) A[-Any] portion of a public thoroughfare that is:
1. Adjacent to or within the entertainment destination center; and
2. [when it is] Closed to vehicular traffic;
(b) A[-Any] area designated by the lease as a common area; or
(c) A[-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-premise licenses under KRS 243.030 and 243.040.

(2) If premises located on premises owned or leased by the owner of the entertainment destination center in the lease, a licensed retail drank 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 allow 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 shall maintain the entertainment destination center license, 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 identity 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 licensee shall be solely responsible for notifying the department of the dates and times during which alcoholic beverages shall be sold in the nonpermanent 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 established 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) Except as provided in paragraph (b) of this subsection, a licensee in the center shall not hold a retail package alcoholic beverage license.

(b) A liquor package licensee with an existing contractual commitment may retain at its licensed premises after the entertainment destination center license is issued, if the license in the center shall be prohibited from holding retail package alcoholic beverage licenses, except that 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) A licensee shall be fully responsible for alcohol violations occurring on its licensed premises, including its nonpermanent location.

(b) The entertainment destination center licensee shall be solely responsible for alcohol violations occurring at its nonpermanent locations, kiosks, or in any-where 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 138.

(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.
CONTACT PERSON: Virginia Yaranan Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 13, 2009)

804 KAR 4:300. License renewals.

RELATES TO: KRS 243.090(1)
STATUTORY AUTHORITY: KRS 241.060(1), 243.090(1), EQ 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.090(1) requires the Office of Alcoholic Beverage Control to establish a year-round system for renewal of licenses.
EQ 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control. This administrative regulation establishes the system for license renewal [Executive Order 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and...
reorganized the Office of Alcoholic Beverage Control as the Department of Alcoholic Beverage Control. EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet.

Section 1. A licensee shall renew its license on or before the expiration date of the license as established in the document titled "ABC Table of License Expiration Dates by Zip Code".

(1) Except as provided in subsections (2) and (3) of this section, a licensee shall renew in the month listed under the column titled "Month License Expires" based on the zip code of the location for which the license was issued.

(2) The license of a statewide or out of state licensee shall expire in December.

(3) Unless a licensee notifies the department of its intent to renew premise licenses separately as provided in subsection (4) of this section, a licensee that holds a group license that covers multiple premises shall renew its licenses at the same time as follows:

(a) If the licensee’s name begins with a numeral or the letters L through Z, the license shall expire in July; and

(b) If the licensee’s name begins with the letters M through Z, the license shall expire in August.

(4) If a licensee that holds a group license that covers multiple premises wants to renew the premise licenses separately, the licensee shall notify the board, in writing, of its intent to renew each premise separately. The licensee shall then be renewed using the license expiration data based on the zip code of each premise, as provided in subsection (1) of this administrative regulation.

(5) A licensee that holds more than one license shall not be required to send a letter requesting that its licenses be renewed separately or in a batch unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch.

Section 2. Incorporation by Reference. (1) "ABC Table of License Expiration Dates by Zip Code," 07/15/04 edition, is incorporated by reference. The board shall establish the date each license expires, and the month the license is to be renewed and a table reflecting 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 2–1. 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) 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, 2008
FILED WITH LRC: November 14, 2008 at 8 a.m.
CONTACT PERSON: Virginia Vanaman Davis, Internal Policy Analyst, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-6850, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 13, 2009)

804 KAR 4:400. ABC basic application form incorporated by reference.

RELATES TO: KRS 164.772, 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390, EO 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the office to promulgate an administrative regulation to establish the license application form. Executive Order 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet and reorganized the Office of Alcoholic Beverage Control as the Department of Alcoholic Beverage Control. 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, have notarized and submit to the Department[Office] of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage Licenses[ABC-Basic—application form] with the exception of an applicant [applicants] for:

(1) An agent’s, solicitor’s, out-of-state brewer, out-of-state microbrewer, or[and] beer importer license;

(2) A special temporary license; or[and]

(3) A transporter’s license.

Section 2. In addition to the Basic Application for Alcoholic Beverage Licenses require[by the ABC-Basic—application form—coord] 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 the schedule or form required by 804 KAR 4:410 for the specific license type for which the applicant is applying[an ABC Schedule form for the specific license type for which he is applying]. The schedule is listed and incorporated by reference in 804 KAR 4:410.


(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.
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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 13, 2009)

804 KAR 9:010. Retail liquor license limit.

RELATES TO: KRS 241.010(39)(37), 241.060, 241.065, 241.075, 243.030
STATUTORY AUTHORITY: KRS 241.060(1), (2), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board 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. EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcoholic Beverage Control as the Department of Alcoholic Beverage Control. This administrative regulation establishes the basis of this limitation and establishes the manner in which the population of a county is to be ascertained for purposes of the number of licenses in a county.

Section 1. (1) Except as provided in 804 KAR 9:040 or in subsection (2) of this section, the number of retail package liquor licenses issued by the Alcoholic Beverage Control Board in any county of the Commonwealth shall not exceed a number equal to one (1) for every 2,300 persons resident.

(2) A county containing a city of the first class shall be subject to the limitations established in KRS 241.065.

Section 2. (1)(a) Except as provided in paragraph (b) of this subsection or in subsection (2), (3), (4), or (5) of this section, the number of retail liquor licenses issued 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.

(b) Subject to the exceptions in subsections (2), (3), (4), and (5) of this section. A county containing a city of the first class shall be subject to the limitations established 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 for a facility that 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) Has submitted to the Board evidence that the facility will accommodate sufficient patrons to sustain the operation of a retail drink outlet. The evidence shall include documentation that the facility:

1. Contains at least fifty (50) sleeping units;

2. Contains dining facilities for at least 100 persons; and

3. Receives from its total food and beverage sales at least fifty (50) percent of its gross receipts from the sale of food.

An applicant shall submit to the Board satisfactory proof that the facility will 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.

(d) 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 a facility that:

(e) [For] a restaurant as defined by KRS 241.010(33)(37);

(b) Has a minimum seating capacity of 100 people at tables;

(c) Has submitted an application to the Board;

1. Evidence satisfactory proof that the facility meets the criteria established 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.

(d) If applying for a license renewal, has submitted [an application for renewal, the license shall] an annual report to the Board indicating annual gross receipts from the sale of food and the sale of alcoholic beverages.

(1) 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 established in subsection (in subsection) (2), (3), (4), or (5) 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) (a) 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.

(b) Upon receipt of these estimates from the Kentucky State Data Center, the Board, in consultation with 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.

(c) The Department 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.

NORMAN ARFLACK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: November 12, 2008
FILED WITH LRC: November 14, 2008 at 8 a.m.
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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 13, 2009)


RELATES TO: KRS 241.060(2), 241.065, 241.075, 243.030(7)
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

STATUTORY AUTHORITY: KRS 241.060(2), EO 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2)(d) and 242-660(21) authorizes the board to limit the number of licenses of each kind or class to issue in this state or any political subdivision, and restrict the locations of licensed premises. EO 2008-507, effective June 10, 2008, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control. The administrative regulation established 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 impractical number of licenses disproportionate 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. For Pikeville, following its repeal of prohibition on April 12, 1933, the retail package liquor license quota shall be thirty (30).

Section 2. For Madisonville, following its repeal of prohibition on March 10, 1922, the retail package liquor license quota shall be seven (7).

Section 3. For Central City, following its repeal of prohibition on July 10, 2002, the retail package liquor license quota shall be four (4).

Section 4. For Dawson Springs, following its repeal of prohibition on February 5, 2008, the retail package liquor license quota shall be one (1).

Section 5. For Lancaster, following its repeal of prohibition on August 19, 2008, the retail package liquor license quota shall be three (3). [The city of Pikeville repealed prohibition on April 12, 1933, 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 4,785 and the resident population of Pike County is 41,129.]

Section 2. The city of Madisonville repealed prohibition on March 10, 1922, 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 45,064.

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 6,766 and the resident population of Muhlenberg County is 31,649.

Section 4. The city of Dawson Springs repealed prohibition on February 5, 2008, 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 2,038 and the resident population of 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 population of the city of Lancaster is 4,306 and the resident population of Garrard County is 17,041.

LATASHA BUCKNER, General Counsel
NORMAN ARFLOCK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: November 12, 2008
FILED WITH LRC: November 14, 2008 at 8 a.m.
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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(As Amended at ARRS, January 13, 2009)

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

RELATES TO: KRS 351.070(1)(o), 351.127, 351.182, 352.350
STATUTORY AUTHORITY: KRS 351.070(13), 351.127(1), (5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of this chapter. KRS 351.127(1) requires the department to promulgate administrative regulations establishing training requirements for mine emergency technicians. This administrative regulation establishes standards by which mine emergency technicians shall be trained, certified, and retrained. 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 administrative regulation establishes standards by which mine emergency technicians shall be trained, certified, and retrained.

Section 1. Definitions. [The following definitions apply to this administrative regulation.]

(1) "Current", as applied to training and its certification, means the present status of training, as certified by the agency that(whom) reviews or attests to it.

(2) "Emergency medical technician" or "EMT(EMT)" means a person who is certified by the Kentucky Board of Emergency Medical Services certified by the Cabinet for Health and Family Services who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency or on route to definitive medical care.

(3) "Licensee" is defined by KRS 351.070(1)(o).

(4) "Mine emergency technician" or "MET(MET)" means a person certified by the Office of Mine Safety and Licensing Department of Mines and Minerals who is trained to provide immediate emergency medical care to an injured person at the mine site.

(5) "OMSL" or "OSM/L" means the Office of Mine Safety and Licensing.

Section 2. MET Certification Requirements. (1) Each applicant for certification as a MET shall:

(a) Hold a surface or underground miner's certification in the Commonwealth of Kentucky;

(b) Successfully complete the standard program of training and education established by this administrative regulation and a series of written and practical skills examinations prescribed by the OMSL, in accordance with 805 KAR Chapter 7;department;

(c) Hold a current course completion card in adult foreign-body airway obstruction and adult one (1) and two (2) rescuer CPR;

(d) Be eighteen (18) years of age or older; and

(e) Understand and be able to read, speak, and write in the English language.

(2) A Kentucky certified miner who is an emergency medical technician with a current CPR course completion card may apply for MET certification as a mine emergency technician.

Section 3. MET Training Course Requirements. (1) The training course curriculum for certification as a MET shall include:

(a) Instruction in cardio pulmonary resuscitation (CPR) and adult one (1) and two (2) rescuer CPR approved by at least one (1) of the following organizations:

(1) The American Red Cross;

(2) The American Safety and Health Institute;
3. The American Heart Association; or  
4. The Nation Safety Council; and  
(b) The following subjects from textbooks as prescribed by the  
Office of Mine Safety and Licensing:  
1. Roles and responsibilities;  
2. The human body;  
3. Patient assessment;  
4. Airway and Pulmonary Resuscitation;  
5. Cardiac emergency;  
6. Breathing aids and oxygen therapy;  
7. Bleeding and shock;  
8. Soft tissue and internal organs;  
9. Upper and lower extremity muscular and skeletal injuries;  
10. Skull and spine injuries;  
11. Chest, abdominal, and genital injuries;  
12. Medical emergency;  
13. Hazardous materials;  
14. Environmental and electrical emergencies;  
15. Special patterns and behavioral problems;  
16. Disaster management;  
17. Lifting and moving;  
18. Extrications;  
19. Infection control; and  
20. Burns. [Instruction in the materials set out in the BRADY  
Basic First Responder text, 1st edition, chapters 1-23 and 25-29.]

(2) The training course shall also:  
(a) Be not less than forty (40) hours in duration;  
(b) Be taught by an instructor certified by the OMSL in accordance with 805 KAR Chapter 7;  
(c) Include equipment, texts, audio-visual and other materials approved by the OMSL in accordance with 805 KAR Chapter 7 as adequate to train METs;  
(d) Be limited to thirty (30) students per instructor; and  
(e) Be conducted in a training facility approved by the OMSL in accordance with 805 KAR Chapter 7 as adequate to train METs.

Section 4. MET Certification Examination. (1) When the MET applicant takes the MET certification examination, the MET applicant shall provide verification on a Certificate of Training Form, Federal Form 5000-23, that the applicant has successfully completed the standard program of MET training and education prescribed by the OMSL in accordance with 805 KAR Chapter 7.

(2) The Certificate of Training Form, Federal Form 5000-23, shall be signed by the MET applicant, be embossed 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 prescribed and administered by OMSL in accordance with 805 KAR Chapter 7 and shall consist of the following two (2) parts:

(a) A written examination with an overall grade of eighty (80) percent required to pass; and  
(b) A practical 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 when the examination is given. 

(b) A practical examination, which shall be permitted one (1) opportunity to retest the portion or portions failed.

(b) The reexamination shall be conducted within sixty (60) days of the initial examination date.

(6)(a) If the applicant for certification fails to pass the written or practical portion of the examination, he shall be permitted one (1) opportunity to retest the portion or portions failed.

(b) The reexamination shall be conducted within sixty (60) days of the initial examination date.
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carefully completing 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(1) through (7) 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; and
(e) Completing the initial MET certification examination requirements established in Section 4(4) of this administrative regulation. He shall successfully complete the initial MET certification examination requirements set out in Section 3(3) of this administrative regulation.

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 OMSL (the 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 OMSL (the 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
(1) Either
(e) Teach an eight (8) hour MET retraining class during the [his] period of certification; or
(2) (d) Meet the re-certification 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:
(a) Hold a Mine Instructor certification issued by the OMSL and
(b) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) rescue CPR issued by at least one of the organizations listed in Section 3(1)(a) of this administrative regulation or
(2) Be an EMT instructor who is also qualified in accordance with subsection (1) of this section.
(1) Hold a mine instructor certification issued by the OMSL (the department);
(2) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) rescue CPR issued by at least one of the organizations listed in Section 3(1)(a) of this administrative regulation, and [either]
(1) 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 OMSL (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 OMSL in accordance with 805 KAR Chapter 7 (department); and
(4) Verify on a Mine Emergency Technician Certification form, MET Recertification form EF-16 that the MET has successfully completed each subject or training course for which credit shall be [his] approved;
(5) Immediately upon completion of initial training or continuing education courses, the completed form, Mine Emergency Technical Certification form EF-16, shall be provided to the student; and
(6) (a) Shall submit copies of all Mine Emergency Technician Certification form EF-16, forms within thirty (30) days of MET retraining completion dates, to the Office of Mine Safety and Licensing; and
(b) The Mine Emergency Technician Certification form EF-16 shall be signed by the MET, certified 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 (Miners’ Board) may, revoke, suspend, or probate the MET certification or MET instructor certification of a person who the Commission (Miners’ Board) determines, based upon allegations substantiated by the OMSL (department), has responded or acted inappropriately in the capacity 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’s or MET instructor’s level of certification;
(c) Maintain patient confidentiality;
(d) Respond timely (timely respond) to an emergency;
(2) All actions taken by the Commission (Miners’ 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 [forms are] incorporated by reference:
(a) The Mine Safety and Health Administration Certificate of Training form 5000-23, January 1993; and
(b) Mine Emergency Technician Certification Course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescue CPR (the BLA); and
(c) Federal Form 5000-23;
(d) Form EF-16, April 2006;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Office of Mine Safety and Licensing (obtained from, or examined, or copied at the office 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: September 7, 2008
FILED WITH LRC: 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, email Johnny.Greene@ky.gov.

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Section 1. Definitions. [As used in this administrative regulation, (1) "Audited financial report" means and includes those items specified in Section 4 of this administrative regulation; (2) "Accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; and (3) "Audit Committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an issuer or group of issuers and audits of financial statements of the issuer or group of issuers; (4) "Audited financial report" means an audit report prepared in accordance with the standards established by the American Institute of Certified Public Accountants; (5) "Commissioner" means the Executive Director or the Chair of the Department of Insurance; (6) "Controlling person" is defined in KRS 304.37-010(b); (7) "Department" means Department of Insurance; (8) "Group of Insurers" means those licensed insurers included in the filing of insurance reports of KRS 304.37-020 or a set of insurers identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting; and (9) "Insurer authorized to do business in Kentucky by the commissioner" means an insurer authorized to do business in Kentucky by the commissioner.

Section 2. Purpose and Scope. (1) The purpose of this administrative regulation shall be to improve the supervisory and investigatory functions of the Department of Insurance with respect to the financial condition of insurers by requiring: (a) An annual audit of financial statements reporting the financial position and the results of operations of insurers; and (b) A report on the internal control over financial reporting, prepared by insurers, that complies with the standards established by the American Institute of Certified Public Accountants; (2) Every insurer shall subject to this administrative regulation; insurers having direct premiums written in this state of less than $1 million during any calendar year and less than 1,000 policyholders or certificate holders of direct premiums written in this state at any time during the calendar year shall be exempt from this administrative regulation.

(3) Unless the commissioner makes a specific finding that compliance is necessary for the department to carry out its statutory responsibilities, insurers shall be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.

1. Direct premiums written in this state of less than $1,000,000; and
2. Less than 1,000 policyholders or certificate holders of direct written policies nationwide.

(4) Insurers that have assumed premiums of $1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation. (5) Insurers shall be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.

(6) Insurers shall be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.

(7) Federal or alien insurers filing the audited financial report shall be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.

(8) Insurers that have assumed premiums of $1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.

(9) Insurers that have assumed premiums of $1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.

(10) Insurers that have assumed premiums of $1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation. The commissioner may make such specific findings on a case-by-case basis.
stantially similar to the requirements of this administrative regulation, are exempt from this administrative regulation if:

(a) The following documents, which are filed with the other state, are filed with the commissioner in accordance with Sections 4, 11, and 12 of this administrative regulation:

1. A copy of the audited financial report;
2. Communication of internal control-related matters noted in an audit; and
3. Report on significant deficiencies in internal controls; and

The accountant's letter of qualifications, which are filed with the other state, are filed with the executive director in accordance with the filing dates specified in Sections 4, 11, and 12 of this administrative regulation, respectively. (Canadian insurers may submit accountants' reports as filed with the Office of Superintendent of Financial Institutions, Canada (Canadian-Dominion Department of Insurance)); and

(b) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner (executive director) within the time specified in Section 9 of this administrative regulation.

(4) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state shall be exempt from filing the report in this state if:

(a) The other state has substantially similar reporting requirements; and

(b) The report is filed with the commissioner of the other state within the time specified.


Section 3. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner (executive director) on or before June 1 for the year ended December 31 immediately preceding. The commissioner (executive director) may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner (executive director) for thirty (30) day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the commissioner (executive director) of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the commissioner (executive director) to make an informed decision as to the requested extension.

(3) If an extension is granted in accordance with subsection (2) of this section, a similar extension of thirty (30) days shall be granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audit financial report pursuant to this administrative regulation shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this administrative regulation at the election of the controlling person.

Section 4. Contents of Annual Audited Financial Report. (1) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance supervisory authority of the insurer's state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant;
(b) Balance sheet for reporting admitted assets, liabilities, capital, and surplus;
(c) Statement of operations;
(d) Statement of cash flows;
(e) Statement of changes in capital and surplus;
(f) Notes to financial statements as required by KRS 304:3-240 in accordance with KRS 304:9-241. These notes shall be those required by the national association of insurance commissioners. Annual Statement Instructions and any other notes required by generally accepted accounting principles shall also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to KRS 304:3-240 with a written description of the nature of these differences and:

2. A summary of ownership and relationships of the insurer and all affiliated companies; and

(g) The financial statements included in the audited financial report shall be:

1. Prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner (executive director), and

2. Comparative, if the financial statements are comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The annual statement form and instructions are those prescribed by the National Association of Insurance Commissioners as required by KRS 304:3-240 (Life and Accident and Health, Form 1, 1990) and Fire and Casualty (Form 2, 1990), incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (EST), weekdays.

Section 5. Designation of Independent Certified Public Accountant. (1) Each insurer required by this administrative regulation to file an annual audited financial report shall, within sixty (60) days after becoming subject to this requirement, register with the commissioner (executive director) in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this administrative regulation. Insurers not retaining an independent certified public accountant on the effective date of this administrative regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner (executive director), stating that the accountant is aware of the provisions of the insurance laws of the insurer's state of domicile that relate to accounting and reporting matters and affirming that the accountant will express the accountant's opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance regulatory authority in that state, specifying any exceptions as the accountant may believe appropriate.

(3) If an accountant was the accountant for the immediately preceding filed audited financial report is dissolved or resigns the insurer shall:

(a) Within five (5) business days notify the commissioner (office) of this event;
(b) Furnish the insurer's office with a certificate of appointment (executive director) with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding the accountant's resignation there were any disagreements with the former accountant on any matter of:

1. Accounting principles or practices;
2. Financial statement disclosure;
3. Auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would cause the accountant to make reference to the subject matter of the disagreement in connection with the opinion. These shall include disagreements:
1. Concerning accounting principles, financial statement disclosure, or auditing scope or procedure.
2. That has been resolved to the former accountant's satisfaction and those not so resolved.
3. That occur at the decision-making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel responsible for rendering its report, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this subsection shall include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements occur at the decision-making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel responsible for rendering its report.

(c) Request to the former accountant to furnish a letter addressed directly to the insurer stating whether the former accountant agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which the accountant does not agree,

(d) Furnish the responsive letter from the former accountant to the commission[executive-director] together with its own

Section 6. Qualifications of Independent Certified Public Accountant. (1) The commission[executive-director] shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is [that-is] not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice or, for a Canadian or British insurer, that is not a chartered accountant or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(2) Except as otherwise provided in this administrative regulation, an independent certified public accountant shall be recognized as qualified if [as long as] the independent certified public accountant conforms to the standards of the auditing profession, as contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants (January 12, 1988) and the standards, administrative regulations, and codes of ethics and rules of professional conduct administered by the Board of Accountancy of Kentucky in accordance with KRS Chapter 325 and 201 KAR Chapter 1 (1991), or similar code of professional conduct adopted by the American Institute of Certified Public Accountants and followed by the American Institute of Certified Public Accountants. The standards, administrative regulations, and codes of ethics and rules of professional conduct administered by the Board of Accountancy of Kentucky in accordance with KRS Chapter 325 and 201 KAR Chapter 1 (1991), or similar code of professional conduct adopted by the American Institute of Certified Public Accountants and followed by the American Institute of Certified Public Accountants shall be incorporated by reference and available from the Kentucky Office of Insurance, 214 W. Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET) on weekdays.

(3) The lead or coordinating audit partner having primary responsibility for the audit shall not [No partner or other person responsible for rendering a report] act in that capacity for more than seven (7) consecutive years.

(a) The following any period of service the person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five (5) years (two (2) years after the effective date of this administrative regulation).

(b) An insurer may make application to the commission[executive-director] for relief from this rotation requirement on the basis of unusual circumstances. Application shall be made at least thirty (30) days before the end of the calendar year. The commission[executive-director] may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm,
2. Premium volume of the insurer,
3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file with its annual statement filing the approval for relief from paragraph (a) of this subsection that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nonresident state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/index.

(c) The commission[executive-director] shall not recognize as a qualified independent certified public accountant, nor accept any annual audit financial report, prepared in whole or in part by any natural person who:

1. Has been convicted of fraud, bribery, or a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968—[or any dishonest or criminal conduct under federal or state law];

2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this administrative regulation;

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this administrative regulation.

(d) If an insurer disagrees with a determination made by the commission[executive-director] pursuant to subsection (3) of the section, it may request a hearing in accordance with KRS 304.2-310 (as set forth in KRS Chapter 304-2).

(6)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audit financial report prepared in whole or in part by an accountant who provides services to an insurer, contemporaneously with the audit, the following nonaudit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;
2. Financial information systems design and implementation;
3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
4. Actuarial-oriented advisory services involving the determination of amounts recorded in the financial statements. The actuary may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An actuary's actuarial report may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

b. The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility;

(c) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
5. Internal audit outsourcing services;
6. Management functions or human resources;
7. Broker or dealer, investment adviser, or investment banking services;
8. Legal services or expert services unrelated to the audit.

(b) A qualified independent public accountant shall not:

1. Function in the role of management;
2. Audit his or her own work; and
3. Serve in an advocacy role for the insurer.

(c) Insurers having direct written and assumed premium of less than $100,000,000 in any calendar year may request an exemption from subsection (5)(a) of this section.

(d) To request an exemption, the insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(c) If the commissioner finds, upon review of the statement, that compliance with the administrative regulation would constitute an organizational hardship upon the insurer, an exemption may be granted.

(7) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection (5)(a) of this
section or that do not conflict with subsection (5)(b) of this section, only if the activity is approved in advance by the audit committee in accordance with subsection (8) of this section.

(b) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee.

(6) The preapproval requirement shall be waived with respect to nonaudit services if:

1. The insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity; or

2. The aggregate amount of all non-audit services provided to the insurer constitutes not more than five (5) percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided.

(b) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

c. The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are members of the board of directors to whom authority to grant approvals has been delegated by the audit committee.

(9) The audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant the preapprovals required by subsection (8) of this section. The decisions of any member to whom the authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(10)(a) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if the following were employed by the independent certified public accountant and participated in the audit of that insurer during the one (1) year period preceding the date that the most current statutory opinion is due:

b. A member of the board;

b. President;

c. Chief executive officer;

d. Controller;

e. Chief financial officer;

f. Chief accounting officer; or

g. Any person serving in an equivalent position for that insurer.

2. This subsection shall only apply to partners and senior managers involved in the audit.

3. An insurer may make application to the commissioner for relief from the above requirements on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief for subsection (10)(a) of this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nonresident state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www.naic.org/service/index.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports if the insurer is part of a group of insurers which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included, and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of Independent Certified Public Accountant. (1) Financial statements furnished pursuant to Section 4 of this administrative regulation shall be examined by the independent certified public accountant.

(2) The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with SAS No. 109, "Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement" and SAS No. 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained", or their replacements, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by SAS 109 and SAS 110, for those insurers required to file a management's report of internal control over financial reporting pursuant to Section 2 of this administrative regulation, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall also be given to other procedures illustrated in the Financial Condition Examination Handbook of the National Association of Insurance Commissioners ([1990]), incorporated by reference and available from the Kentucky Office of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays, which the independent certified public accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1)(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of KRS 304.3-120 and 304.3-125; the Kentucky Insurance Code as of that date.

(b) An insurer which has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of this report being furnished to the commissioner.

(c) If the independent certified public accountant fails to receive this evidence within the required five (5) business days period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(2) An independent certified public accountant shall not report [it is not the intent of the commissioner that an independent certified public accountant be liable in any manner to any person for any statement made in connection with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this administrative regulation, becomes aware of facts which might have affected his report, the commissioner notes the obligation of the accountant to take the action prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants ([1990]), incorporated by reference and available from the Kentucky Office of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays.


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(1)(a) In addition to the annual audited financial statements, each insurer shall furnish the commissioner[executive director] with a written communication as to any unremediated material weakness in its internal control over financial reporting noted during the audit.

(b) The communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report and shall contain a description of any unremediated material weaknesses as of December 31 immediately preceding in the insurer’s internal control over financial reporting noted by the accountant during the course of their audit of the financial statements.

(c) If no unremediated material weaknesses were noted, the communication shall state that none were found.

(d) An insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the action is not described in the accountant’s communication.

Section 11. Accountant’s Letter of Qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the accountant’s profession as contained in [the Code of Professional Conduct and Professional Practice of the American Institute of Certified Public Accountants (January 12, 1988) and] statutes, administrative regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky set forth in KRS Chapter 325 and 201 KAR Chapter 11(001), both available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays. For similar content, see the following:

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing in this administrative regulation prohibits the accountant from utilizing staff as the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report, that the accountant’s opinion on it will be filed in compliance with this administrative regulation, and that the commissioner[executive director] will rely on this information in monitoring and administrative review of the financial position of insurers;

(4) That the accountant consents to the requirements of Section 12 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner[executive director], his designee, or his appointed agent, the work papers;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants;

(6) A representation that the accountant is in compliance with the requirements of Section 6 of this administrative regulation.

Section 12. Availability and Maintenance of Independent Certified Public Accountant Work Papers. (1) Every insurer required to file an audited financial report pursuant to this administrative regulation shall require the accountant to make available for review by department[office] examiners all work papers prepared in the conduct of the accountant’s audit[examination] and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department[office] of the office, or at any other reasonable location designated by the commissioner[executive director]. The insurer shall require that the accountant retain the audit work papers and communications until the department[office] has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

(2) In the conduct of the periodic review by department[office] examiners described in subsection (1) of this section, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department[office]. Reviews by the department[office] examiners shall be considered investigations and all working papers and communications obtained during the course of shall be afforded the same confidentiality as other examination work papers generated by the department[office].

Section 13. Requirements for Audit Committees. This section shall not apply to foreign or alien insurers licensed in the state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for purposes of preparing or issuing the audited financial report or related work pursuant to this administrative regulation. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (5) of this section and section 8(4) of this administrative regulation.

(3)(a) A member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee, accept any consulting advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary.

(3)(b) Notwithstanding paragraph (a) of this subsection, if the law requires board participation by otherwise nonindependent members, the law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be independent for reasons outside the member’s reasonable control, that person may resign by notice to the affected entity in writing, or the affected entity may resign an audit committee member of the affected entity until the earlier of

(a) The next annual meeting of the responsible entity; or

(b) One year from the occurrence of the event that caused the member to be no longer independent.

(5) The audit committee is responsible for reviewing the audit committee's annual audit and the work papers of any other independent accountant.

(6) To exercise the functions of the controlling person to designate the audit committee for purposes of this administrative regulation, the ultimate controlling person shall provide notice to the commissioner of the affected insurer.

(7) Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the change.

(8) The election shall remain in effect until resigned.

(9) The audit committee shall require that the accountant that performs for an insurer any audit required by this administrative regulation timely report to the audit committee in accordance with the requirements of SAS 114, "The Auditor’s Communication With Those Charged With Governance," or its replacement, including:

1. All significant accounting policies and material permitted
practices:

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant and management of the insurer, including any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by paragraph (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7)(a) The proportion of independent audit committee members shall meet or exceed the following criteria:
1. For prior calendar year direct written and assumed premiums between $0 and $300,000,000, no minimum requirements;
2. For prior calendar year direct written and assumed premiums over $300,000,000 to $500,000,000, fifty (50) percent or more of members shall be independent and
3. For prior calendar year direct written and assumed premiums over $500,000,000: seventy-five (75) percent of members shall be independent.

(b) Notwithstanding subsection (7)(a) of this section, the commissioner may require the audit committee's board to enact improvements to the independence of the audit committee membership if the insurer:
1. Is in a risk-based capital action level in accordance with 806 KAR 3:190; or
2. Meets one or more of the standards of an insurer deemed to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer as set forth in KRS 304.205;
3. Is for insurer less than $500,000,000 in prior year direct written and assumed premiums may structure its audit committee with at least a supermajority of independent audit committee members.

(d) For purposes of subsection (7)(a) of this section, prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8)(a) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500,000,000 may mak e application to the commissioner for a waiver from the requirements of this section based upon hardship.

(b) The insurer shall file, with its annual statement filed, the application for relief under this section with the statement that it is licensed or doing business in and the National Association of Insurance Commissioners.

(c) If the nonaffiliated state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic form acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/index.

Section 14. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

(1) A director or officer of an insurer shall not, directly or indirectly:
(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this administrative regulation or
(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this administrative regulation.

(2) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this administrative regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any of the following actions to coerce, manipulate, mislead or fraudulently influence any accountant with respect to the professional engagement:
(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles as required by KRS 304.3:241, generally accepted auditing standards, or other professional or regulatory standards;
(b) To not perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
(c) To not withdraw an issued report; or
(d) To not communicate matters to an insurer's audit committee.

Section 15. Management's Report of Internal Control over Financial Reporting

(1) Every insurer required to file an audited financial report pursuant to this administrative regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting.

(b) The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit.

(c) Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1)(a) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer:
(a) Is in a risk-based capital level event in accordance with 806 KAR 3:190; or
(b) Meets one or more of the standards of an insurer deemed to be in hazardous financial condition in accordance with KRS 304.205.

(3) An insurer or a group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum in satisfaction of the requirements of this section if those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements were included in the scope of the Section 404 Report:
(a) Directly subject to Section 404; (b) Part of a holding company system whose parent is directly subject to Section 404; (c) Not directly subject to Section 404, but is a SOX compliant entity and
(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity.

(c) Management's report of internal control over financial reporting shall include:
(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of internal control over financial reporting;
(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded; and
(e) Disclosure of any remedied material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not
conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting: 

(1) A statement regarding the inherent limitations of internal control systems; and 

(2) Signatures of the chief executive officer and the chief financial officer. 

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities. 

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of the documentation, in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation. 

(b) Management's report on internal control over financial reporting, as required by this section, and any documentation provided in support of the report during the course of a financial examination, shall be kept confidential by the department. 

Section 16. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner[executive-director] may grant an exemption from any and all provisions of this administrative regulation if the commissioner[executive-director] finds, upon review of the application, that compliance with this administrative regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. 

Upon denial of an insurer's written request for an exemption from this administrative regulation, the insurer may request a hearing on its application for an exemption pursuant to KRS 304.02-310 [Chapter 304.5]. 

(2) Domestic insurers retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall comply with this administrative regulation for the year ending December 31, 2010[4991], and each year thereafter unless the commissioner[executive-director] permits otherwise. 

(3) Domestic insurers not retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner[executive-director] permits otherwise: 

- As of December 31, 2010[499], file with the commissioner[executive-director] an annual financial report; 
- Report on an audit of a certified public accountant; and 
- Notes to audited balance sheet. 

(4) For the year ending December 31, 2010[4991], and each year thereafter, these insurers shall file with the commissioner[executive-director] all reports and communications required by this administrative regulation. 

(5) Foreign insurers shall comply with this administrative regulation for the year beginning December 31, 2010[January 1, 2010][January 1, 1993], and each year thereafter unless the executive director permits otherwise. 

(6) The requirements of Section 13 of this administrative regulation shall be effective January 1, 2010. 

(b) An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation, is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premiums are below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements in Section 6 of this administrative regulation. 

(c) An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements in Section 13 of this administrative regulation. 

Section 17. Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be defined as the annual statement of total business in the manner filed by these insurers with their [insurers] regulatory authorities duly audited by an independent chartered accountant. 

(2) For Canadian and British insurers, the letter required by Section 5 of this administrative regulation shall state that the accountant is aware of the requirements relating to the annual audited financial reports as required by the commissioner[executive-director] pursuant to Section 3 of this administrative regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 5 of this administrative regulation. 

Section 18. Incorporation by reference. (1) The following material is incorporated by reference: 

- AJL Section 561, "Subsequent Discovery of Facts Existent at the Date of the Auditor's Report", 1996 Professional Standards of the American Institute of Certified Public Accountants; 
- SAS 114, "The Auditor's Communication With Those Charged with Governance", 2007, American Institute of Certified Public Accountants; 
- SAS 109, "Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement", 2007, American Institute of Certified Public Accountants; and 

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 

(3) Forms may also be obtained on the department's Web site at http://dpd.prr.ky.gov/kentucky.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.280(3) authorize the Authori-
ty[commissione][Authority] to promulgate administrative regulations prescribing the conditions under which horse racing shall be con-
ducted in Kentucky. KRS 230.320(1) authorizes the Authori-
ty[commissione][Authority] to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. EO 2008-668, effective July 3, 2008, ab-
olished the Kentucky Horse Racing Authority and established the Kentucky Horse Racing Commission. This administrative regula-
tion establishes track rules and requirements concerning proper conduct.

Section 1. A leading horse shall be entitled to any part of the track. After selecting a position in the home stretch, a driver of a horse shall not do any of the following things, which shall be consid-
ered violation of driving rules:
(1) Change either to the right or left during any part of the race if another horse is so near the driver that in altering positions, the driver compels the horse behind to shorten strides, or causes the driver of any other horse to pull the horse out of his stride;
(2) Jostle, strike, hook wheels, or interfere with another horse or driver;
(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;
(4) Swerve in and out or pull up quickly;
(5) Crowd a horse or driver by "putting a wheel under him";
(6) "Carry a horse out" or "sit down in front of him", take up abruptly in front of other horses so as to cause confusion or interfe-
rence among the trailing horses, or do any other act which consti-
tutes "helping";
(7) Allow a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;
(8) Lay off a normal pace and leave a hole if it is well within the horse's capacity to keep the hole closed;
(9) Commit an act which impedes the progress of another horse or causes the horse to "break";
(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner which interferes with another horse or causes the horse to change course or take back;
(11) Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race;
(12) Whirl under the arch of the sulky;
(13) Cross the inside limits of the course; or
(14) Fail to set or maintain a pace comparable to the class being raced, including traveling an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race; or
(15) Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

Section 2. (1) A horse or a horse's sulky that leaves the course by brushing, running over, or going inside of a pyton demarcation shall have violated this administrative regulation and[if]—if the pytons that horse] may be penalized by a disqualification if in the opinion of the judges:
(a) The action results in the horse gaining an unfair advantage over other horses in the race;
(b) The action helps the horse improve its position in the race; or
(c) The driver goes inside the pytons and does not immediately correct position.
(2) A horse using the inside to pass shall have complete clear-
ance of the pytons.
(3) A driver striking pytons but not gaining an unfair advantage shall be cited for a violation of this administrative regulation unless he was forced to strike the pytons by circumstances beyond his control.
(4) If an act of interference causes a horse or part of a horse's sulky to be in violation of this administrative regulation and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Complaints, Reports of Interference. (1) Complaints.
(a) A complaint by a driver relating to driving or other miscon-
duct during a heat shall be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury;
(b) A driver desiring to enter a claim of foul or other complaint of violation of the rules shall, before dismounting, indicate to the judges the driver's intention to enter a claim or complaint, and im-
mediately upon dismounting, the driver shall proceed to the tele-
phone or judges' stand where the claim, objection, or complaint shall be immediately entered.
(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has been entered and con-
sidered.
(2) Report of interference. A driver shall report any interference to himself or herself or to the driver's horse by another horse or driver during a race to the designated official.

Section 4. If a violation set forth in Section 1 or 2 of this admin-
istrative regulation is committed by a person driving a horse couplet as an entry in the betting, the judges shall set both horses back, if in their opinion, the violation may have affected the finish of the race. Otherwise, penalties shall be applied individually to the drivers of any entry.

Section 5. Unsatisfactory Drive; Fraud. (1) A heat in a race shall be fairly contested by each horse in the race and each horse shall be driven to the finish.
(2) It shall be a violation of this administrative regulation for a horse to be driven:
(a) With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;
(b) In an inconsistent manner with the intent to improperly ma-
nipulate the outcome of a race; or
(c) To perpetrate or to aid in a fraud.
(3) The judges shall substitute a competent and reliable driver at any time prior to the start of the heat or race if the judges have reason to doubt the competence or reliability of the original driver.
(4) A substitute driver shall be paid from the purse money due to the horse.

Section 6. A driver may be removed and another driver substi-
tuted after the positions have been assigned in a race if, in the opinion of the judges, a driver:
(1) Is unfit or incompetent to drive;
(2) Refuses to comply with the directions of the judges; or
(3) Is reckless in his or her conduct and endangers the safety of horses or other drivers in the race.

Section 7. If, for any cause other than being interfered with or broken equipment, a horse falls to finish after starting in a heat, that horse shall be ruled did not finish.

Section 8. (1) Loud shouting or other disruptive or distract-
ing improper conduct shall not occur[be forbidden] during a race.
(2) A driver may[shall be allowed to] remove a foot from the stirrup temporarily for the purpose of pulling earplugs.

Section 9. Whipping. (1)(a) A driver may have a whip if it does not[shall be allowed to have a whip not to exceed four (4) feet, plus a noose not longer than six (6) inches].
(b) A whip shall not have a snapper of any kind[shall be pro-
hibited].
(2) A person shall not use any goading device, chain or me-
echanical device, or appliance, other than the ordinary whip or crop upon a horse in any race, training exercise, or while on association grounds.
(3)(a) A whip or crop shall not be used in a brutal, exces-
sive, or indiscriminate manner[The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop during a race, training exercise, or while on association grounds[shall be pro-
hibited].
(b) A driver shall use a whip only in the conventional manner, by holding the handle and whipping the horse only above the
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shafts.

c) Wells, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.

d) A driver shall not (be permitted to):
1. Whip[Whipping] a horse under the arc or shafts of the sulky.
2. Kick[Kicking] a horse;
3. Punch[Punching] a horse;
4. Jab[Jabbing] a horse;
5. Use[Using] the whip so as to interfere with or cause disturbance to any other horse or driver in a race;
6. Whip[Whipping] a horse after a race; or
7. Whip[Whipping] a horse that is exhausted or no longer in contention to win the race.

(d) A driver shall keep a line in each hand and both hands shall be held in the left hand.

Section 10. (1) A horse shall not wear hopplest in a race unless it starts in hopplest in the first heat.

(2) Having so started, the horse shall continue to wear them to the finish of the race.

(3) A person removing or altering a horse’s hopplest during a race, or between races, for the purpose of fraud, shall be considered to be in violation of this administrative regulation.

(4) A horse habitually wearing hopplest shall not (be permitted to) start in a race without them unless the horse performs satisfactorily in a qualifying race.

(5) A horse habitually racing free-legged shall not (be permitted to) wear hopplest in a race unless the horse performs satisfactorily in a qualifying race.

(6) A horse shall not (be permitted to) wear a head pole protruding beyond its nose.

Section 11. Breaking. (1) If a horse breaks from its gait in trotting or pacing, the driver shall at once, without clearance exists, take the horse to the outside and pull it to its gait.

(2) The following shall be considered a violation of this section:
(a) Failure to properly attempt to pull the horse to its gait;
(b) Failure to take to the outside if there exists;
(c) Failure to lose ground by the break; or
(d) Failure to prevent extended break.

(3) If there has been no fault on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contesting horse on its gait is lapped on the hind quarters of the breaking horse at the finish.

(4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.

(5) If a horse or driver’s actions cause another horse to be off-stride at the wire, the offending horse shall be placed behind the horse with whom it interfered after all other placements have been made.

(6) A horse making a break, which causes interference with other contesting horses, shall be placed behind all offended horses.

(7) The judges shall set a horse back one (1) or more places if a violation of this section has been committed.

Section 12. [It—shall—be—the—duty—of] One (1) of the judges shall call out every break made, and the clerk shall at once note the break and its character in writing.

Section 13. The time between separate heats of a single race shall be no less than forty (40) minutes. A heat shall not be called after sunset if the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 14. Horses called for a race shall have the exclusive right of the course, and other horses shall vacate the track at once, unless permitted to remain by the judges.

Section 15. If any horse in the current program falls or runs uncontrollably on the track or is involved in an accident after starting to warm up, that horse shall be permitted to start only after examination and approval by the commission[Authority] veterinarian.

Section 16. If an accident occurs, the judges shall allow adequate time in between heats to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements.

Section 17. A driver shall be seated in his sulky at the finish of the race or the horse shall be placed not finishing.

Section 18. [It—shall—be—the—responsibility—of] The owner and trainer shall[be] provide every sulky used in a race with uncolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission[Authority]. If necessary, the presiding judge may order the use of mud guards which shall be provided by the owners or trainers.

Section 19. Sulky. A sulky shall not be used in a race unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2005, Rule 18, Section 25, "Sulky Performance Standards”.

Section 20. Helmets. A protective helmet, securely fastened under the chin and meeting the Snell Foundation 2000 Standard for Protective Headgear for Use In Harness Racing, shall be worn at all times on the premises of an association if:

(1) Racing, parading, or warming up a horse prior to racing; or
(2) Jogging, training, or exercising a horse at any time.

Section 21. Safety Vests. (1) A safety vest shall be worn if racing, parading, or warming up a horse prior to racing.

(2) A safety vest shall:
(a) Cover the torso, from front and back, from the collar bone to the hip bone;
(b) Be of uniform material and thickness over the whole of the vest except for:
1. Localized variation due to pattern, as, for example, quilting;
2. Thinner areas to aid fit, as, for example, under the arms, at fastenings, and at edges; and
3. Thicker areas in regard to particularly sensitive areas of the body, for example, the spine; and
(c) Equal or exceed a minimum shock absorbance rating of five (5) according to the specifications established by the British Equestrian Trace Association (BETA), which are as follows:
1. Use a critical height apparatus to measure the maximum deflection on impact of a striker consisting of a spherical indenter weighing five and nine-tenths (5.9) plus or minus 0.05 kilograms with a diameter of 215 (plus or minus two (2) millimeters);
2. Condition the vest and the striker for a minimum of three (3) hours at twenty-three (23) degrees (plus or minus two (2) degrees) Centigrade;
3. With the vest lying on a smooth, flat, massive concrete base with the inside of the vest facing the striker and positioned so that the striker will impact on an area of typical thickness, not reinforced by additional material, raise and release the striker starting at a height of two-tenths (0.2) meters and increasing the height by increments of two-tenths (0.2) meters to a height which will result in a deceleration of over 300 gravity units (1G=9.81 ms), as measured by recording the signal from an accelerometer through the impact from the time before the striker impacts the vest until the accelerometer returns to the same level as before the impact.
4. Record the gravity units measured at each height increment on a line graph which has the gravity units in ascending order as the vertical axis and the release height in meters in ascending meters as the horizontal access; and
5. Plot the height in meters at which the deceleration reached 300 gravity units; and
6. Multiply the height obtained in paragraph 5 of this subsection by ten (10) to calculate the shock absorbance rating.

Section 22. Penalties. (1) A horse that violates Section 1 or 2
of this administrative regulation shall:
(a) Be placed back one (1) or more positions in the heat or
dash behind the horse with which the horse interfered;
(b) Be disqualified from receiving any winnings, if a horse is
prevented from finishing as a result of the violation; or
(c) Be placed last among finishing horses, if a horse which
the violation the horse interfered with fails to finish the race due to a sepa-
rate and unrelated incident.
(2) (a) A person or association that violates any section of this
administrative regulation other than Section 9 or the administrative
regulation shall have committed a Category 1 violation and shall be
subject to the penalties set forth in 811 KAR 1:095, Section 4(1),
unless, in the opinion of the judges, the violation was committed
with the intent to alter or affect the outcome of a race or with
the intent to defraud, in which case the person or association shall
have committed a Category 3 violation and be subject to the penal-
ties set forth in 811 KAR 1:095, Section 4(3).
(b) A person in violation of section 9(1), (2), or (3) of this ad-
ministrative regulation shall be subject to a penalty of suspension
or revocation of licensing privileges from three (3) days to one
(1) year. The license whose licensing privileges may be suspended
cancelled and the commission may enter into an agreement to
mitigate the violation or revocation by agreeing to payment of a
fine of $100 to $20,000, in proportion to the severity of the
violation.
(c) A person in violation of section 9(4) of this administrative
regulation shall be subject to the following penalties:
1. For a first offense, a suspension or revocation of licensing
privileges from ten (10) to thirty (30) days. The license whose
licensing privileges may be suspended or revoked and the com-
mmission may enter into an agreement to mitigate the suspen-
sion or revocation by agreeing to payment of a fine of $100 to
$15,000, in proportion to the seriousness of the violation.
2. For a second offense, a suspension or revocation of licens-
ing privileges from twenty (20) to sixty (60) days. The license
whose licensing privileges may be suspended or revoked and the
commission may enter into an agreement to mitigate the suspen-
sion or revocation by agreeing to payment of a fine of $500 to
$15,000, in proportion to the seriousness of the violation.
3. For a third offense, a suspension or revocation of licens-
ing privileges from forty (40) to 90 days. The license whose
licensing privileges may be suspended or revoked and the com-
mission may enter into an agreement to mitigate the suspension or revoca-
tion by agreeing to payment of a fine of $1,000 to $18,000, in propor-
tion to the seriousness of the violation.
Section 23. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) Rules and Regulations of the United States Trotting Asso-
ciation, 2005, Rule 18, Section 25, "Sulky Performance Standards"; and
(b) The Snell Memorial Foundation's "2000 Standard for Pro-
ective Headgear for use in Harness Racing".
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the office of the Kentucky Horse
Racing Commission [Authority], 4063 Iron Works Pike, Lexington,
Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained from the Kentucky

ROBERT M. BECK, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 14, 2008 at 4 p.m.
CONTACT PERSON: John L. Forgy, General Counsel, Ken-
tucky Horse Racing Commission, 4063 Iron Works Parkway, Build-
ing B, Lexington, Kentucky 40511, phone (859) 246-2040, fax
(859) 246-2039.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Violence Prevention Resources
(As Amended at ARRS, January 13, 2009)

920 KAR 2:020. Domestic violence batterer intervention
provider-offender treatment [certification standards].

RELATES TO: KRS Chapter 13B, 202A.011(12)(d), 202A 400,
200.030, 222.005, 309 080-309.085, 309.130-309.1399, Chapters
311, 319, 335.080, 335.100, 335.300-335.399, 335.500-335.599,
403.715-403.785, 421.570, Chapters 506, 507, 507A, 508, 509,
510, 510.020-511.040, 512.020, Chapters 513(Chapter) 515, 517,
517.050, Chapter 520(Chapter 520-520.050), 520.060, 530.060,
530.064, 530.065, 530.070, 531.030, 531.040, 531.300-531.370,
620 030, and 45 C.F.R. Part 46
STATUTORY AUTHORITY: KRS 194A.050(1), 403.7505[EO
2004-2026]

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
cooporate with other state and federal agencies for the proper
administration of the cabinet and its programs [EO 2004-2026, ef-
teective July 9, 2004, created the Cabinet for Health and Family
Services and placed the Department for Mental Health and Mental
Retardation within the Cabinet for Health and Family Services
require 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 domestic violence batterer intervention programs.

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 [Application
means the Application for Certification as a Provider for Court-
Ordered Domestic Violence-Offender Treatment and related attac-
ches].
(3) "Assessment" means the evaluation of a batterer in
accordance with Section 9(1) of this administrative regulation [an
offender's]:
(a) "Characteristics;"
(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 serv-
ces [in accordance with Section 4(2) or (4)(2)(H)(6) 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) or (4)(2)(H)(6) 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;
(b) Is a respondent in a protective order issued by a court pur-
suant to KRS 403.740, 403.760(1), 508 155(4); or
(c) Has been named a domestic violence perpetrator in a subst-
antly similar action by the Department for Community Based Services.
(7) "Cabinet" means the Cabinet for Health and Family Services
or its designee;
(8) "Client" means a batterer [offender] who has been
admitted to a program.
(9) "Court" means a district, family, or circuit court of the
Commonwealth of Kentucky.

10[(9)(9)] "Court-ordered" means subject to an order entered by a
district, family, or circuit court judge for a battery[an-offender] to
be assessed by a provider to determine the batterer[offender]'s eligibility for admission to a program or to participate in a program.

11[(10)] "Department" means the Department for Community
Based Services[Mental Health and Mental Retardation Services] or
its designee.

12[(11)] "Domestic violence" is defined by KRS 403.720(1).

12[(12)] "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 408-165(4).

13 "Domestic violence shelter" means a program meeting the
standards of 922 KAR 5:040.

14 "Intervention" means individual or group counseling and
education based upon a core curriculum that focuses on cessation of domestic violence.

15 "Program" means the services provided in accordance with
Sections 5 through 12 of this administrative regulation to batterers[offenders] who have been referred by a court for assessment or intervention[treatment] related to domestic violence.

16[(13)] "Provider" means an associate provider or an
autonomous provider.

17[(14)] "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.

18[(15)] "Screening" means the action taken by a provider to
determine the batterer[offender]'s eligibility for admission to the
program.

17[(16)] "Treatment" means individual and group counseling and
education based upon a core curriculum that focuses on cessation of domestic violence.

19[(17)] "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 application 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 if:
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
cabinet shall certify the applicant as:
(a) An associate provider, if the applicant meets the qualifications
specified in Section 4(1) of this administrative regulation; or
(b) 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,
Department for Mental Health and Mental Retardation Services,
Division of Mental Health.

(5) The cabinet shall notify an applicant in writing if certification
is granted or denied no later than sixty (60) days after receiving an
application or after receiving additional documentation, if the
department retains the application in accordance with Section 3(2) of
this administrative regulation. The notice in accordance with para-
graph (a) of this subsection shall:
1. [a] Specify the effective date of certification, if applicable;
2. [b] Specify the basis of the denial of the application, if applicable;
3. [c] 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. Intra-procedural process established in Section 13 of this
      administrative regulation; and
   b. [e] Administrative hearing process established in Section
      14 of this administrative regulation.

(6) Certification as a provider shall be effective for two (2)
years.

(a) Unless a provider's certification has been revoked in
accordance with Section 3 of this administrative regulation, the
department[the commission] 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 8(3) 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].

(7) The department[the cabinet] may solicit references[recommendations] from individuals outside the
department[the cabinet] regarding the certification of providers.

Section 3. Denial or Revocation of Certification. (1) The
department[the cabinet] shall deny certification to an applicant if it 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;
(c) The department cannot verify the authenticity of the
documentation of qualifications submitted in the application;
or
(d) The department may deny certification based on the
   a. A determination that the applicant is not subject to criminal
carriage or other domestic violence.

(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)(3)(e) of this administrative regulation, if the department
does not certify in accordance with subsection (1)(a) of this
section.

(3) The department[the 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;
   3. Kidnapping or a related offense pursuant to KRS Chapter
      508;
   4. A sexual offense pursuant to KRS Chapter 510;
   5. Burglary or a related offense pursuant to KRS Chapter
      511 through 511.040;
   6. Criminal damage to property pursuant to KRS 512.020;
   7. Robbery pursuant to KRS Chapter 515;
   8. Falsifying business records as defined in KRS 517.050 if the
      convicted 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; 531.370; 12. Sexual exploitation of a minor pursuant to KRS 531.300 to 13. Criminal attempt as defined in KRS 506.010, to commit an 14. Distribution of obscene materials involving a minor pursuant 15. Promoting prostitution pursuant to KRS 529.090 to 529.040 [or 529.060]; 16. Ansect as defined in KRS Chapter 513; or 17. Fetal necropsy as defined in KRS Chapter 507A; 18. (b) Has been the subject of a domestic violence protective order within the five (5) years prior to the date of the application or anytime after the effective date of certification; 19. (c) Has had an alcohol or other drug abuse problem as defined in KRS 222.055(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 222.055(3)(h) anytime after the effective date of certification; 20. (d) Is subject to a current court order restraining or enjoining the applicant from providing a service licensed by the department or certification; or 21. (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. 22. (f) Depending on the severity of the offense, the department may deny an application or revoke the certification of a provider who: 23. (g) 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; 24. (h) Currently has a sanction applied against a professional license or certification; 25. (i) 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; 26. (j) Has failed to implement a corrective action plan in accordance with Section 12(b) or (f)(4)(a) or (b) of this administrative regulation. 27. (k) Has failed to follow the curriculum submitted in the application or submitted and approved in accordance with Section 10(11)(e) of this administrative regulation; 28. (l) Has failed to meet a requirement established in Sections 2 through 11 of this administrative regulation; 29. (m) Has provided information that the department: 30. 1. Is unable to verify; or 31. 2. Has determined to be incorrect; or 32. (n) Has failed to meet the data submission requirements as specified in Section 6(10) of this administrative regulation. 33. (5) The department shall revoke the certification of a provider that fails to meet the continuing education requirement specified in Section 6(9) of this administrative regulation. 34. (6) If a provider's certifications is revoked, the department shall notify a provider in writing if certification is revoked. 35. [A][The] notice in accordance with paragraph (a) of this section shall: 36. (a) Specify the effective date that certification shall be revoked; 37. (b) Specify the basis of the determination to revoke a certification; and 38. (c) Inform the provider of the right to appeal the revocation in accordance with the 39. a. Informal resolution process established in Section 13 of this administrative regulation; and 40. b. [the] Administrative hearing process established in Section 14 of this administrative regulation. 41. (7) A provider whose certification is revoked in accordance with subsection (3)(b) or (c) of this section shall be ineligible for certification until the fifth anniversary of the effective date of the revocation. 42. (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. 43. (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. 44. (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 requirements of Section 2(5) of this administrative regulation. Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider shall be: 45. (a) A bachelor's[bachelor's] degree from an accredited university or college; 46. (b) Completion of twenty-four (24) clock hours of specialty training in domestic violence including: 47. 1. Characteristic dynamics of domestic violence; 48. 2. Clinical profiling of domestic violence batterers[offenders]; 49. 3. Risk assessment and lethality of domestic violence batterers[offenders]; 50. 4. Intervention of batterers[Treatment of offenders]; 51. 5. Effective services for victims and child witnesses of domestic violence; 52. 6. Safety planning for victims; and 53. 7. Criminal sanctions for domestic violence and legal remedies for victims; 54. (c) Two (2)[Four (4)] years of full-time post bachelors[post-bachelors] degree work experience totaling at least 4,000 hours that shall include general clinical experience or direct case experience related to domestic violence; 55. (d) A written agreement to receive supervision, which shall include: 56. 1. Case discussion; 57. 2. Review of nursing assignments; 58. 3. Skill building; 59. 4. Review of an audio or video recording of assessment and intervention[treatment] performed by the associate provider; and 60. (e) Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant. 61. (2) The qualifications of an autonomous provider shall be: 62. (a) A master's degree from an accredited university or college; 63. (b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines: 64. 1. Psychology in accordance with KRS Chapter 319; 65. 2. Social work in accordance with KRS 335.090 and 335.100; 66. 3. Medicine in accordance with KRS Chapter 311 if board eligible in psychiatry and neurology; 67. 4. Psychiatric nursing in accordance with KRS 202A.011(12)(d); 68. 5. Marriage and family therapy in accordance with KRS 335.300 to 335.399; 69. 6. Professional counseling in accordance with KRS 335.500 to 335.599; 70. 7. Art therapy in accordance with KRS 309.130 to 309.1399; or 71. 7. Art therapy in accordance with KRS 309.130 to 309.1399; or 72. 8. Alcohol and drug counseling in accordance with KRS 309.089 to 309.089; 73. (c) 150 hours of clinical training related to domestic violence under the direct supervision of an autonomous provider[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, 74. (d) Completion of the training specified in subsection (1)(b) of this section; 75. (e) A written recommendation for certification from an autonomous provider[professional] that provided the supervision required by paragraph (c) of this subsection; and 76. (f) Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant. 77. (3) The cabinet shall grant certification as an associate provid-
er 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 this 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 this state's certifying agency.
(5) The cabinet shall waive the requirements of subsection (2) of this section, if an associate provider applies [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 intervention treatment;
(b) Consult with a court, prosecutor, law enforcement official, mental health provider, and others regarding the assessment of and intervention with [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 [one] 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 [A certified] 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] three-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 [domestic-violence offender treatment] for a period of at least one [1] year.
(4) A certified autonomous provider who supervises an associate provider shall:
(a) Provide the supervision required by subsection (2) of this section; and
(b) Assure that an associate provider performs a service in accordance with Sections 4, 5(1), 6, 7, 8, 9, 10, [and 11, 12, and 13] of this administrative regulation; and
(c) A supervisee shall not supervise more than six [5] 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) (b) Domestic violence in any form is criminal behavior.
(d) Batterer intervention [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 [offender] and a provider shall not promote the concept of mutual responsibility in explaining domestic violence.
(f) (e) The batterer [offender] is accountable for domestic violence, which is the product of individual choice and learned traits. The batterer [offender] psychopathology, substance abuse, other disorder, or cultural background is not an explanatory cause of domestic violence but can influence the batterer [offender] behavior.
(g) (f) Cooperation and service coordination between the criminal justice system, the department [for Community-Based Services], a victim's advocate, a domestic violence shelter [spouse abuse center], 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 batterer [An offender and] a client or a victim shall have the right to complain verbally or in writing to the:
(a) Provider;
(b) [the] Referring court or
(c) [the] Cabinet.
(5) A provider shall:
(a) Comply with 45 C.F.R. Part 46, and any applicable state institutional review board [federal 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 site 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.
(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 offenders. A provider shall:
(a) Collect information required by KRS 403.7605; 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 the 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 [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) [Provide the victim information about the program, its possi-
liable benefits, the limitations of the program's intervention services/treatment, and the degree to which the batterer's/offender's participation may or may not result in increased safety for the victim; and

(d) Make reasonable efforts to refer a victim to a domestic violence shelter, victim advocate, or another program designated to provide specialized victim services (e.g., educate the victim about community support 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 a victim.

(3) A provider shall not contact a victim in the presence of a batterer.

(a) If a victim does not consent to participate, withdraws consent to participate, or refuses to participate or 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."

(b) 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 participate or 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's/offender's admission of responsibility for a domestic violence related offense; and

3. Shall not be based solely on the batterer's/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 403.750(3)(a) 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 limitation 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 620.030; 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/offender or 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, [as] the site 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 403.750(3)(a), 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;

(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;

(h) Notification that, at the discretion of the court, failure to comply with the program may result in a citation for contempt of court; and

(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)(a) of this administrative regulation. The assessment conducted in accordance with paragraph (a) of this subsection shall include consideration of the batterer's/offender.

1. (a) History of abusive behavior including degree of harm and type of violent conduct;

2. (a) Criminal history;

3. (a) Risk of harm to self and others;

4. (a) Medical history;

5. (a) History of a mental or emotional disorder;

6. (a) Mental or emotional status;

7. History of(s) presence of a mental illness, or 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 in accordance with the provisions of Section 7 of this administrative regulation and may 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 a 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 may refer an offender to a service which, in his or her professional opinion, is more likely to benefit the offender, if the provider determines, based on the assessment required by subsection (1) of this section, that the offender is unlikely to benefit from the program.

(4) A provider may require a batterer/offender 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/offender is admitted to the program or is referred to another
program or service:
(a) No later than five (5) days after making the assessment required by subsection (1) of this section; and
(b) Within seventy-two (72)[twenty-four (24)] hours, if the provider chooses not to admit a batterer[an offender] to a program based on the batterer[an offender]'s lethality or another factor related to the safety of the victim.

(6) A batterer[an offender] shall be admitted to a program if the batterer[an offender]:
(a) Meets Section 8(1)(a) of this administrative regulation;
(b) Signs a written consent for intervention[treatment];
(c) Signs a written agreement to comply with the program requirements; and
(d) Signs a written authorization for a provider to disclose information to a party identified in Section 8(2)(b) of this administrative regulation.

Section 10. Intervention[Treatment] Procedures. (1) A provider shall make individual or group intervention[treatment] services available to a client at least once weekly.
(2) If a provider offers a group intervention[treatment] program, the program shall segregate male and female batters into separate groups.[Provide separate groups for male and female offenders.]
(3) A group intervention[treatment service] shall include
(a) Between two (2) 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[treatment] session shall require a client to attend for ninety (90) minutes or longer.
(5) A client shall participate in the program for at least twenty-eight (28)[twenty (20)] weeks.
(6) A person not referred by a court may participate in a group intervention[treatment] service provided for court-referred clients.
(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 a provider about personal responsibility for domestic violence;
(f) Confrontation of the client's use of power, control, and coercion in an intimate relationship;
(g) Confrontation of rigid sex role stereotyping;
(h) Challenge of the client's patterns 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; and
(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's professional opinion, 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:
(a) Curriculum content of the individual intervention shall contain the core curriculum in accordance with subsection (7) of this section; and
(b) Provider shall document a minimum of fourteen (14) one (1) hour intervention sessions.
(10)(a) If group intervention[treatment] is provided to a female client, the core curriculum required by subsection (7) of this section shall be:
1. Be Amended as specified in subsection (11) of this section; and
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 victims and witnesses 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 patterns 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 an amendment to a provider's core curriculum, if the provider submits to the department:
1. [Monographs on a manner which relates to gender-specific issues.]
(b) A provider may amend a core curriculum with the prior written approval of the department. The provider shall submit to the Sexual and Domestic Violence Program Administrator:
(a) A written request for approval of an amended core curriculum;
(b) An explanation of the purpose for the amendment; and
(c) The proposed amended core curriculum.
(d) 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.
(e) The notice provided in accordance with paragraph (b) of this subsection shall:
1. Specify the effective date of the approval, if granted;
2. Specify which of the requirements of subsection (7) or (10)(a) of this section that the amended curriculum does not meet, if it is disapproved; and
3. 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 to a victim, then the provider shall comply with the warning requirements of KRS 202A.400 [If an intended victim has been threatened.]
(13) If a client is discharged from a program, the 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 8(2)(b) of this administrative regulation is discharged from the program.
(14) A provider shall document each effort to notify a victim.
(15) A provider shall not offer or provide marital counseling or family therapy to a client or a victim.
(a) Unless the client:
[1. Has successfully completed the program; and
2. Has not demonstrated his relationship with a victim for at least six (6) months; and
3. Has completed a program.]
(b) A provider shall not offer or provide marital counseling or family therapy to a client or victim, if:
1. There is a foreseeable risk of harm to the victim which
may result from the mental services; or

2.[(b)] The provider believes that the victim may agree to par-
ticipate because of coercion or threat from the client.

Section 11. Involuntary Discharge from a Program. (1) A pro-
vider 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 as-
signments;
(c) Violates a provision of a court order; or
(d) After admission to the program, perpetrates domestic vi-
cence 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 intervention(treatment):
(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.[(a)] Specify the reason for the discharge; and
2.[(b)] Be made no later than five (5) days after the determi-
nation; or
3.[(c)] Be made without later than seventy-two (72)(twenty-
four-(24)) hours if the determination is made in accordance with subsection (1)(c)
of this section.

(4) If the discharge is pursuant to subsection (1)(d) of this sec-
tion, a provider shall:
(a) Immediately attempt to notify the victim in accordance with
Section 10(13)(4)(b) of this administrative regulation; and
(b) If the discharge is pursuant to subsection (1)(d) of this
section, a provider shall:
1.[(a)] Document each effort to notify the victim.
2.[(b)] Provide a transfer to another provider if:
(a) The provider requests.
(b) The reason for the provider's request is verifiable;
(c) The provider is in good standing in the receiving program;
(d) The receiving provider accepts the transfer into the receiv-
ing program; and
(e) Communication between the sending and receiving provi-
ders is documented and includes a mutually agreed upon interven-
tion plan for the provider.

(d) If a provider is transferred in accordance with subsection (3)(c) of this section, a
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:
(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 require-
ments 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.

3. The cabinet may conduct periodic provider reviews to:
(a) Determine if a provider is in compliance with the require-
ments established in the requirements in Sections 2 through 11 of this administrative regulation; and
(b) [to] Evaluate overall quality of services provided.

4. A cabinet/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[or treatment
services][unless a center][offender] to objects to be observed;
(f) Interviews with one (1) or more of the following:
1. A provider[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[or Family Services and Children]; or
6. Personnel from any other agency who:
   a. [is knowledgeable about the provider's practice;
   b. [who] interacts with a provider;
   c. [who] has knowledge about the provider's practice;
   d. [who] has knowledge about the provider's practice;
   e. [who] has knowledge about the provider's practice;
   f. [who] has knowledge about the provider's practice;
   g. [who] has knowledge about the provider's practice;
   h. [who] has knowledge about the provider's practice;
   i. [who] has knowledge about the provider's practice]

3. [If the cabinet determines that a certifier has failed to meet the requirements of Sections 2 through 11 of this
administrative regulation or is endangering a client or 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.[(c)] Revoke a provider's certification in accordance with
Section 3(3) 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 this
administrative regulation, the:
[a] The cabinet shall notify an autonomous provider who supervises an associate provider;

7. If the cabinet determines that the associate provider has failed to meet a requirement specified in Section 5(4)(b) of this
administrative regulation, the cabinet shall notify an autonomous provider who supervises an associate provider;

8. A review or investigation conducted by cabinet shall
include precautions to avoid risk or harm to a client or domestic-violence victim.

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 12(5)(9)
of this administrative regulation; or
(d) A determination, which is specified in a notice, provided in
accordance with Section 10(11)(d)(40)(b) of this administrative
regulation.

2. A request for informal resolution meeting shall:
(a) Identify the disputed determination or action;
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(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 an 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 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 determination or action at least three (3) business days prior to the scheduled date of the meeting; and
(c) The appellant agrees to cancelation 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 enfore 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 requesting a written request for 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, 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 138.030, 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(8) of this administrative regulation if applicable;
(d) A copy of the notice provided by the department in accordance with Section 13(8) 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 13B.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;
(c) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(7) The hearing officer shall conduct the hearing in accordance with KRS 13B.080.

(8) The hearing officer shall consider the facts as presented at the hearing, including supplemental material, if requested, and prepare a recommendation in accordance with KRS 13B.110.

(9) 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 13B.110(4). The secretary shall make the final decision of the cabinet pursuant to KRS 13B.120, supported by findings of fact and conclusions of law.

(10) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and KRS 13B.150.

(11) 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 Provider Certification", edition September 2006; and
(b) "DVPR-002, Service Appeal Form", edition September 2006 ["Application for Certification as a Provider for Court-Ordered Domestic Violence Offender Treatment, November 16, 2002" is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services [Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LC: November 14, 2008 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7906; fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(As Amended at ARRS, January 13, 2008)


RELATES TO: KRS Chapter 45A, 194A.050(1), [194B.060] 205.175, 205.177, 205.710-205.990, 205.990(1), (2), (4), (6), 403.271, 405.430(1), (12), 406.035, 434.845, 45 C.F.R. 302.34, 303.70(c), 303.107, 26 U.S.C. 6103(a), (b), 7213(a)(2), 31 U.S.C. 7502, 42 U.S.C. 651 et seq.

STATUTORY AUTHORITY: KRS 194A.050(1), 405.520, 42 U.S.C. 654(26)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 405.520 authorizes the cabinet to promulgate administrative regulations to implement the Child Support Recovery Program. [KRS 194B.900 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. Definition. "CSEP" means the Child Support Enforcement Program.

Section 2. Safeguarding Information. (1) Use or disclosure of information obtained exclusively for the Child Support Enforcement Program (CSEP/CSP) shall be restricted pursuant to KRS 194B.380(2), 205.175, 205.730, 205.735, 205.768(2), 205.772(4), and 205.776, 45 C.F.R. 303.70(d)(2) and (i) 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(26).

(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 3. Program Administration Contract. (1) A program administration contract initated 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/CSP;
(b) Specify clear and definite terms and requirements of the contract;
(c) Specify financial reimbursement arrangements including:
1. Budget estimate;
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 31 U.S.C.(668), 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/CSP 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 4. An Agreement with a Financial Institution. The cabinet shall enter into an agreement with a financial institution pursuant to KRS 205.172(14), 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 the cabinet has identified to a financial institution through a data match for the purpose of monitoring and auditing; and
(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 5 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 in designated notices, paperless, 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 an 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 Services, 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
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)
CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Income Support  
Child Support Enforcement  
(As Amended at ARRS, January 13, 2008)


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 205.755 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 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 921 KAR 2.006, Section 18(17)(4) and (5).

(3) In a case referred to 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 213.046(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 KAR 5.070(1).

(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(4)(d)(6).

(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 Services, 276 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.
CONTACT PERSON. Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support  
Child Support Enforcement  
(As Amended at ARRS, January 13, 2008)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.


STATUTORY AUTHORITY: KRS 194A 050(1), 205.755, 405 520.

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 205.755 and 405.520 authorizes 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; or
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)(3), 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; and
2. A copy of the child support obligator worksheet is obtained; or
(b) One-hundred (100) percent of the income of the parent with whom the prior born child resides, if:  

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1. There is no support order;
2. There is a support order, but no support obligation worksheet; or
3. A worksheet cannot be obtained.

(5) 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 parents, 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.

(4) Every thirty-six (36) months in a K-TAP case in which the address of each parent or custodian is known.

(5) 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.

(6) 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.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "CS-64, Noncustodial Parent Appointment Letter", edition 3/09/10/06;
(b) "CS-65, Statement of Income and Resources", edition 3/09/10/06;
(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", edition 3/09/10/06;
(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 3/09/10/06;
(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 3/09/10/06;
(f) "CS-79, Notification of Review Determination", edition 3/09/10/06;
(g) "CS-80, Rights and Responsibilities of Noncustodial Parents", edition 3/09/10/06;
(h) "CS-84, Administrative Subpoena", edition 3/09/10/06;
(i) "CS-93, Advance Notice of Intent to Request Full Credit Report", edition 3/09/10/06;
(i) "CS-130, Wage Information Request", edition 3/09/4(06);  
(k) "CS-131, Nonparental Custodian Information Request", edition 3/09/4(06);  
(l) "CS-132, Child Care Expense Verification", edition 3/09/4(06);  
(m) "CS-133, Custodial Parent Information Request", edition 3/09/4(06); and  

(2) The 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 Services, 275 East Main Street, Frankfort, Kentucky 40621; 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, if requested, 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 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 SW-B, Frankfort, Kentucky 40601, phone (502) 564-7805, 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 regulation is consistent with the authorizing statutes.  
(d) How this administrative regulation currently assists or will assist in the effective implementation of the statutes: This administrative regulation assists in the effective implementation 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 the existing administrative regulation: The amendment will change the information 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 with the new program name. The remaining forms, "CS-65, Statement of Income and Resources", "CS-66, Administrative Order/Notice of Monthly Support Obligation", "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", "CS-79, Notification of Review Determination", "CS-84, Administrative Subpoena", "CS-93, Advance Notice of Intent to Request Full Credit Report", "CS-130, Wage Information Request", "CS-131, Nonparental Custodian Information Request", "CS-133, Custodial Parent Information Request", and "CS-136, Health Insurance Information Request", are amended to reflect minor language changes and update with the new program name.

(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) The actions that each of the affected entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected materials have been updated to reflect the program name changes.

(g) 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 fee for the entities involved. Continuation of child support enforcement services at no additional cost.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

TIERNING: 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), 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 gen-
erate 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 gen-
erate 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 reve-
 nue 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 subse-
quent 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:
ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)


RELATES TO: KRS 224.10-100, EO 2008-507, 2008-531, 40 C.F.R. Part 60 (Chapter 224)

STATUTORY AUTHORITY: KRS 224.10-100(5)(224.10-100)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5)(224.10-100) authorizes (requires) the [Environmental and Public Protection] cabinet to promulgate (prescribe) administrative regulations for the prevention, abatement, and control of air pollution. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation provides for the control of emissions from new indirect heat exchangers.

Section 1. Definitions. (1) "Indirect heat exchanger" or "IHE" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a fluid medium that does not come in contact with or add to the products of combustion.
(2) "CEMS" means continuous emissions monitoring system.
(3) "Classification date" means:
(a) August 17, 1971, for indirect heat exchangers with a capacity greater than 250 million BTU per hour heat input for particulate emissions, sulfur dioxide emissions, or nitrogen oxide emissions if fuels other than lignite are burned;
(b) April 9, 1972, for indirect heat exchangers with a capacity of 250 million BTU per hour heat input or less for particulate emissions, sulfur dioxide emissions, and nitrogen oxide emissions if fuels other than lignite are burned;
(c) December 22, 1978, for indirect heat exchangers with a capacity greater than 250 million BTU per hour heat input for nitrogen oxide if lignite fuel is burned.
(4) "COMS" means continuous monitoring system for opacity.
(5) "PM CEMS" means a particle matter continuous emissions monitoring system.

Section 2. Applicability. (1) This administrative regulation shall apply to indirect heat exchangers having an input capacity greater than one (1) million BTU per hour commenced on or after the applicable classification date.
(2) Except as provided in Section 3(3) of this administrative regulation, an indirect heat exchanger subject to this administrative regulation shall not cause emissions of particulate matter in excess of:
(a) 0.52 lbs per million BTU actual heat input for IHEs with total input capacity of less than 10 (10) million BTU per hour; or
(b) 0.10 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more; and
(c) 0.05 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all IHEs located at a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet, shall be used as specified in Sections 2 and 5 of this administrative regulation to determine the allowable emission rate in terms of lbs per million BTU heat input.
(2) The permitted allowable emission rate of an indirect heat exchanger shall not be changed due to inclusion or shutdown of another heat exchanger at the source.
(3) Sources may petition the cabinet to approve an allowable emission rate apportioned independently from heat input if the control is specified in this subsection and:
(a) The allowable emission rate shall be determined according to the following equation: E = (A x B) / C in which:
   1. A = allowable emission rate (in lbs per million BTU heat input as determined pursuant to subsection (1) of this section);
   2. B = total rated heat input (in millions of BTU per hour) of all indirect heat exchangers at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;
   3. C = total rated heat input (in millions of BTU per hour) of all indirect heat exchangers at the source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;
   4. D = allowable emission rate (in lbs per million BTU heat input) as determined pursuant to 401 KAR 61:015, Section 3(1);
   5. E = total rated heat input in millions of BTU per hour of all indirect heat exchangers at the source commenced before the applicable classification date, and
   6. F = alternate allowable emission rate in lbs per actual million BTU heat input.
(4) The total emissions in lbs per hour from all indirect heat exchangers at the source subject to this administrative regulation divided by the total actual heat input in millions of BTU per hour of the indirect heat exchangers shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection.
(5) A source operating an IHE, which is not subject to a federal new source performance standard (NSPS) of 40 C.F.R. Part 60 only because the IHE commenced construction prior to the NSPS classification date, shall not allow emissions (subject to a federal new source performance standard (NSPS) of 40 C.F.R. Part 60) shall not allow the emissions from an indirect heat exchanger commenced on or after the applicable classification date to exceed the allowable emission rate determined by the IHE's rated heat input as specified in Sections 2 and 5 of this administrative regulation.
(6) The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:045 for each indirect heat exchanger subject to this administrative regulation.
(7) The source shall demonstrate that compliance shall be maintained with this subsection on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided in Section 3(3) of this administrative regulation, an indirect heat exchanger subject to this administrative regulation shall not cause emissions of particulate matter in excess of:
(a) 0.52 lbs per million BTU actual heat input for IHEs with total input capacity of less than 10 (10) million BTU per hour or less; or
(b) 0.10 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more; and
(c) 0.05 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided in Section 3(3) of this administrative regulation, indirect heat exchangers subject to this administrative regulation shall not cause emissions of gases that contain sulfur dioxide in excess of:
(a) For IHEs with total heat input capacity of ten (10) million BTU per hour or less;
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1. Three and zero-tenths (3.0) lbs per million BTU actual heat input for combustion of liquid and gaseous fuels; and
2. Five and zero-tenths (5.0) lbs per million BTU actual heat input for combustion of solid fuels;
   (a) For IHEs with total heat input capacity of 250 million BTU per hour or more,
   (b) For combustion of liquid and gaseous fuels, the value 7.7233 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4106 power;
   (c) For combustion of solid fuels, the value 13.8781 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4434 power.

3. Compliance shall be based on the total heat input capacity from all fuels burned.

4. For simultaneously burning different fuels in combination, the applicable standard shall be determined by proportioning BTUs pursuant to the following equation: Allowable sulfur dioxide emission in lbs per million BTU per hour heat input = [(a) + (b) + (c) + (d)] / (y + z), in which:
   (a) = percent total heat input derived from liquid or gaseous fuel;
   (b) = percent total heat input derived from solid fuel;
   (c) = allowable sulfur dioxide emission in lbs per million BTU heat input derived from liquid or gaseous fuel;
   (d) = allowable sulfur dioxide emission in lbs per million BTU heat input derived from solid fuel.

Section 6. Standard for Nitrogen Oxides (1) An Indirect heat exchanger with heat input capacity of 250 million BTU per hour or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:
   (a) 0.50 lbs per million BTU heat input (0.36 g per million cal) derived from gaseous fuel;
   (b) 0.30 lbs per million BTU heat input (0.54 g per million cal) derived from liquid fuel;
   (c) 0.70 lbs per million BTU heat input (1.26 g per million cal) derived from solid fuel except lignite;
   (d) 0.60 lbs per million BTU heat input (1.08 g per million cal) derived from lignite or lignite and wood residue except as provided in paragraph (a) of this subsection and
   (e) 0.80 lbs per million BTU derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired IHE.

(2) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be operated using the equation: Allowable nitrogen dioxide emission in the per million BTU/hour heat input = [x(0.50) + y(0.30) + z(0.70) + w(0.60)] / (x + y + z + w), in which:
   (a) x = percent total heat input derived from gaseous fuel;
   (b) y = percent total heat input derived from liquid fuel;
   (c) z = percent total heat input derived from solid fuel (except lignite); and
   (d) w = percent total heat input derived from lignite.

(3) For fossil fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or solid fossil fuel; wood residue; or biomass, the standard for nitrogen oxides shall not apply.

(4) Cyclone-fired IHEs burning fuel containing at least twenty-five (25) percent lignite mined in North Dakota, South Dakota, or Montana shall be subject to subsection (1)(a) of this section for all types of fuel combusted in combination with the lignite.

Section 7. Emission and Fuel Monitoring. This section shall apply to sources operating indirect heat exchangers with rated heat input capacity greater than 250 million BTU per hour.

(1) Except as provided in subsection (2) of this section, sources shall install, calibrate, maintain, and operate a continuous monitoring system for measuring:
   (a)Opacity of emissions;
   (b) Sulfur dioxide emissions;
   (c) Nitrogen oxides emissions; and
   (d) Oxygen or carbon dioxide emissions in the flue gases.

(2) Subsection (1) of this section shall not apply as follows:
   (a) For IHEs burning only gaseous fuel, a continuous monitoring system for opacity (COMS) shall not be required;
   (b) For IHEs burning only natural gas, wood, wood residue, or biomass; or a combination of natural gas, wood, wood residue, or biomass, a continuous emissions monitoring system (CEMS) for sulfur dioxide emissions shall not be required;
   (c) For nitrogen oxide, installation of CEMS may be delayed until after the initial performance tests required by 401 KAR 59:005, Sections 2 and 4(2); and

2. If the initial performance tests results show nitrogen oxide emissions:
   (a) Are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or
   (b) Are greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests.

3. For a source exempt from installing CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required.

4. For IHEs not using flue gas desulfurization devices, CEMS for sulfur dioxide emissions shall not be required if the source monitors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (3) of this section.

5. For performance evaluations subject to 401 KAR 59:005, Section 4(3), and calibration checks subject to 401 KAR 59:005, Section 4(4), the following procedures shall be used:
   (a) Reference Methods 6-6(G) or 7-7(E), incorporated by reference in 401 KAR 59:015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;
   (b) Sulfur dioxide or nitrogen oxide, as applicable, shall be used for preheating calibration gas mixtures pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2;
   (c) The span value for a continuous monitoring system:
   1. For IHEs burning fossil fuels, shall be eighty (80), ninety (90), or one hundred percent, and
   2. For systems measuring sulfur oxides or nitrogen oxides, shall be determined pursuant to the following table:

<table>
<thead>
<tr>
<th>Fossil Fuel</th>
<th>Span Value for Sulfur Dioxide</th>
<th>Span Value for Nitrogen Oxides</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas</td>
<td>*</td>
<td>500</td>
</tr>
<tr>
<td>Liquid</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>Solid</td>
<td>1,500</td>
<td></td>
</tr>
<tr>
<td>Combinations</td>
<td>1,000 + 1,500 + 5000x + y + 1,000z</td>
<td></td>
</tr>
</tbody>
</table>

3. For the table in subpart C of this section, a shall indicate that a valve shall not be applicable;
   b. x = fraction of total heat input derived from gaseous fossil fuel;
   c. y = fraction of total heat input derived from liquid fossil fuel;
   d. z = fraction of total heat input derived from solid fossil fuel;
   e. Span values computed pursuant to paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 ppm; and
   (e) The source shall submit the proposed CEMS span value for all IHEs that simultaneously burn fossil fuel and nonfossil fuel for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection.

4. For continuous monitoring systems installed pursuant to subsection (1) of this section, the following conversion procedures

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shall be used to convert the continuous monitoring data into units of the applicable requirement in nanograms/cube (ng/l) or lb/million BTU.

(a) For continuous monitoring systems measuring oxygen, the pollutant concentration and oxygen concentration shall be measured on a consistent wet or dry basis as follows:

1. Procedures approved by the cabinet and the U.S. EPA pursuant to 40 C.F.R. Part 60, Appendix B, shall be used for wet-basis measurements; and
2. For dry-basis measurements, the following conversion procedure shall be used:

\[ F = 20 \text{ SCF} \times \left( \frac{20.9 \text{ percent minus oxygen}}{100} \right) \times \left( \frac{1 \text{ hour}}{60 \text{ minutes}} \right) \times \left( \frac{1 \text{ minute}}{60 \text{ seconds}} \right) \times \left( \frac{1 \text{ hour}}{60 \text{ minutes}} \right) \times \left( \frac{1 \text{ million BTU}}{1 \text{ cubic foot}} \right) \]

(b) For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon dioxide concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used:

\[ F = \frac{100 \text{ CF} \times \text{percent carbon dioxide}}{E} \times \frac{1 \text{ hour}}{60 \text{ minutes}} \times \frac{1 \text{ minute}}{60 \text{ seconds}} \times \left( \frac{1 \text{ hour}}{60 \text{ minutes}} \right) \times \left( \frac{1 \text{ million BTU}}{1 \text{ cubic foot}} \right) \]

Where:

- \( F \) = pollutant emissions in g/million BTU;
- \( C \) = pollutant concentration in g/dscm (lb/scf) determined by multiplying the average concentration (ppm) for each one (1) hour period by 0.000415 M g/dscm per ppm, multiplied by two, and divided by 1000.

(c) For fuels, \( F \) = a factor representing a ratio of the volume of dry flue gases generated to the volume of the fuel combusted (determined by analysis of the flue gases), and the volume of the flue gases generated to the volume of the fuel combusted (determined by analysis of the flue gases) respectively, pursuant to the applicable American Society for Testing and Materials (ASTM) standard from the Book of ASTM Standards incorporated by reference in 401 KAR 50:10.

Section 7. The source may request, in writing to the cabinet, to install a Particulate Matter Continuous Emissions Monitoring System (PCEMS) in lieu of the requirement of subsection (1)(a) of this section for a CEMS as follows:

(a) Excess emissions for an IHE using PCEMS shall be determined by a boiler-operating day, as defined by 40 C.F.R. 60.41Da, in which the average emissions of organics exceed average of three (3) contiguous one (1) hour periods exceeding the applicable standard; and
(b) The source shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.41Da and 60.49Da.

Section 8. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, the reference methods specified in Appendix A to Part 60 - Test Methods, 40 C.F.R. Part 60, Appendix A shall be used to determine compliance with Sections 4, 5, and 6 of this administrative regulation as follows:

(a) Reference Method 1 shall be used for the selection of sampling sites and sample traverses;
(b) Reference Method 3 shall be used for gas analyses in applying Reference Methods 5, 6, and 7;
(c) Reference Method 5 shall be used for concentration of particulate matter and the associated moisture content;
(d) Reference Method 6 shall be used for the concentration of hydrogen chloride;
(e) Reference Method 7 shall be used for the concentration of nitrogen oxides; and
(f) Reference Method 8 shall be used for visible emissions.

(b) For Reference Method 5:

(a) Reference Method 1 shall be used to select the sampling
site and the number of traverse sampling points;
(b) The sampling time for each run shall be at least sixty (60) minutes, and the minimum sampling volume shall be 0.85 discm (30 (30 discm) except smaller sampling times or volumes, if necessitated by process variables or other factors, may be requested by the source; and
(c) The probe and sample holder heating systems in the sampling train shall be set to provide a gas temperature at no greater than 160 degrees Centigrade (320 degrees Fahrenheit).
(3) For Reference Methods 6 and 7:
(a) The sampling site shall be the same as the site selected for Reference Method 5;
(b) The sampling point in the duct shall be at the centroid of the cross-section or at a point no closer to the walls than one (1) meter (3.28 ft); and
(c) For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
(4) For Reference Method 6:
(a) The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 discm (0.71 discm) for each sample.
(b) The arithmetic mean of two (2) samples shall constitute one (1) run and
(c) Samples shall be taken at approximately thirty (30) minute intervals.
(5) For Reference Method 7:
(a) Each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals; and
(b) The arithmetic mean of the samples shall constitute the run value.
(6) For each run using the methods specified by subsection (1)(a), (b), and (c) of this section, the emissions expressed in milligrams per cubic foot (mg/acf) shall be determined by the following procedure:
E = 79.0 F divided by 20.0 minus percent oxygen, in which:
(a) E = pollutant emission, mg/acf (mg/ft³);
(b) C = pollutant concentration, g/dscm (g/dscf), determined by Reference Methods 5, 6, or 7;
(c) Percent oxygen:
1. Shall equal oxygen content by volume (expressed as percent); dry basis; and
2. Shall be determined using the integrated or grab sampling and analysis procedures of Reference Method 3:
a. For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Reference Methods 6 and 7 determinations;
b. For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 pursuant to subsection (2) of this section; and
(c) Reference Method 1 shall be used for selection of the number of traverse points except that not more than twelve (12) sample points shall be required; and
(d) E = a factor as determined in Section 7(5) of this administrative regulation.
(7) If a combination of coal and oil fuels are fired, the heat input, expressed in kcal/hr (BTU/hr), shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of fuel burned, in which:
(a) Gross calorific value shall be determined in accordance with ASTM method D-240-72 (solid fuels), D-240-72 (liquid fuels), or D1826-72 (gasoline fuels) as applicable and
(b) The rate of fuel burned during each testing period shall be determined by the applicable method and shall be confirmed by a material balance over the steam generation system.
Section 2. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401-KAR 50-040:
(1) "Affected facility" means an indirect heat-exchanger having a heat input capacity of more than one (1) million BTU per hour.
(2) "Direct heat-exchanger" means any piece of equipment, apparatus or component used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.
(3) "Classification date" means:
(a) August 17, 1976 for all affected facilities with a capacity of more than 250 million BTU per hour; and
(b) May 1, 1974 for all affected facilities with a capacity of 250 million BTU per hour or less.
(4) "Classified" means any affected facility classified as such by the Secretary.
Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet, shall be used as specified in Sections 4 and 5 of this administrative regulation to determine the allowable emission in terms of pounds of effluent per million BTU input.
(2) At such time as any affected facility is assigned an allowable emission rate by the cabinet, at no time thereafter shall that rate be changed due to inclusion or shutdown of any affected facility at the source.
(3)(a) A source may petition the cabinet to establish an allowable emission rate which may be apportioned without regard to individual heat input provided that the conditions specified in paragraphs (b), (c), (d), (e), and (f) of this subsection are met. Such allowable emission rate shall be determined according to the following equation:
E = (A + B + C) / X
where:
A = the allowable emission rate (in pounds per million BTU input) as determined according to subsection (1) of this section,
B = the total rated heat input (in millions of BTU per hour) of all affected facilities commencing on or after the applicable classification date within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;
C = the total rated heat input (in millions of BTU per hour) of all affected facilities within a source, excluding those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;
D = the allowable emission rate (in pounds per million BTU input) as determined according to 401-KAR 61-015, Section 3(4);
E = the total rated heat input (in millions of BTU per hour) of all affected facilities commencing before the applicable classification date;
F = the alternate allowable emission rate (in pounds per actual million BTU input).
(b) At no time shall the owner or operator of the source allow the total emissions (in pounds per hour) from all affected facilities within the source divided by the total actual heat input (in millions of BTU per hour) of all affected facilities within the source to exceed the alternate allowable emission rate as determined by paragraph (a) of this subsection.
(c) At no time shall the owner or operator of any source subject to federal new source performance standards allow the emissions from any affected facility commencing on or after the applicable classification date to exceed the allowable emission rate determined by use of that affected facility's rated heat input instead of the heat input as determined by subsection (1) of this section as specified in Sections 4 and 5 of this administrative regulation.
(d) The owner or operator of the source must demonstrate compliance with this subsection by conducting a performance test according to 401-KAR 50-045 on each affected facility under each condition as may be specified by the cabinet.
(e) Upon petition, the cabinet will establish an alternate emissi-
Section 4—Standard for Particulate Matter. Except as provided in Section 2(3) of this administrative regulation, no owner or operator of an affected facility subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere from that affected facility, particulate matter in excess of that specified below:

1. For sources having a total heat input capacity, as determined by Section 3(1) of the administrative regulation, which is:
   (a) Ten (10) million BTU per hour or less, the standard is 0.56 pounds per million BTU actual heat input;
   (b) 250 million BTU per hour or more, the standard is one-tenth (0.10) pounds per million BTU actual heat input;

2. For heat input values between those specified in paragraphs (a) and (b) of the subchapter, the standard in pounds per million BTU actual heat input shall be equal to 0.0034 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.2366 power;

3. Emissions which exhibit greater than twenty (20) percent opacity except:
   (a) That, for indirect heat exchangers with heat input capacity of 250 million BTU per hour or more, a maximum of twenty-seven (27) percent opacity shall be permissible for not more than one (1) six (6) minute period in any sixty (60) consecutive minutes;
   (b) That, for reheat exchangers with heat input capacity of less than 250 million BTU per hour, a maximum of forty (40) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing out.

4. For emissions from an indirect heat exchanger during building new fire for the period required to bring the boiler up to operating conditions provided that the manufacturer recommends the use of new fire.

5. Standard for Sulfur Dioxide. Except as provided in Section 2(3) of this administrative regulation, no owner or operator of an affected facility subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere from that affected facility, any gases which contain sulfur dioxide in excess of that specified below:

1. For sources which have a total heat input capacity, as determined by Section 3(1) of the administrative regulation, which is:
   (a) Ten (10) million BTU per hour or less, the standard is three (3.0) pounds per million BTU actual heat input for combustion of liquid and gaseous fuels; and five (5.0) pounds per million BTU actual heat input for combustion of solid fuels;
   (b) 250 million BTU per hour or more, the standard is eight (8) pounds per million BTU actual heat input for combustion of liquid and gaseous fuels and one (1) and two (2) pounds per million BTU actual heat input for combustion of solid fuels;

2. For heat input values between those specified in paragraphs (a) and (b) of this subsection, the standard in pounds per million BTU actual heat input is equal to:
   1. For combustion of liquid and gaseous fuels, 7.7223 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.4106 power;
   2. For combustion of solid fuels, 13.781 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.4434 power.

3. When different fuels are burned simultaneously in any combination the applicable standard shall be determined by proration using the equation given in Appendix A of this administrative regulation.

4. Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

Section 6—Standard for Nitrogen Oxides. (4) No owner or operator of an affected facility with a heat input capacity of 250 million BTU per hour or more subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere any gases which contain nitrogen oxides expressed as nitrogen dioxide in excess of:

(a) Two-tenths (0.20) lb. per million BTU heat input (0.36 g. per million cal) derived from gaseous fuel;
(b) Three-tenths (0.30) lb. per million BTU heat input (0.54 g. per million cal) derived from liquid fuel;
(c) Seven-tenths (0.70) lb. per million BTU heat input (1.26 g. per million cal) derived from solid fuel (except lignite);
(d) Six-tenths (0.60) lb. per million BTU heat input (1.08 g. per million cal) derived from lignite or lignite and wood residue except as provided under paragraph (e) of the subchapter;
(e) Eight-tenths (0.80) lb. per million BTU heat input (1.44 g. per million cal) derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fired unit.

6. Except as provided in subsection (3) and (4) of this section, when different fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the equation given in Appendix B to this administrative regulation.

7. When a fossil fuel containing at least twenty-five (25) percent by weight of coal residue is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, the standard for nitrogen oxides does not apply.

8. Cyclone-fired units which burn fuel containing at least twenty-five (25) percent of lignite that is mined in North Dakota, South Dakota, or Montana that subject to the subchapter (1)(a) (c) of this section regardless of the types of fuel combusted in combination with that lignite.

Section 7. Emission and Fuel Monitoring. The provisions of this section shall apply to any affected facility of more than 250 million BTU per hour rated heat input capacity.

1. Each owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems for measuring the opacity of emissions, sulfur dioxide emissions, nitrogen oxides emissions and other oxygen or carbon dioxide except as provided in subsection (2) of this section.

2. Certain of the continuous monitoring system requirements under subsection (1) of this section do not apply to owners or operators under the following conditions:

(a) For an indirect heat exchanger that burns only gaseous fuel, continuous monitoring systems for measuring the opacity of emission are not required.

(b) For a direct heat exchanger that burns only natural gas, wood, wood residue, or any combination thereof, continuous monitoring systems for measuring sulfur dioxide emissions are not required.

3. Notwithstanding 401 KAR 39.005, Section (2)(c), installation of a continuous monitoring system for nitrogen oxides may be delayed until after the initial performance tests under 401 KAR 39.005, Section 2, have been conducted. If the owner or operator demonstrates during the performance test that emissions of nitrogen oxides are less than seventy (70) percent of the applicable standard, the owner or operator shall install a continuous monitoring system for nitrogen oxides within one (1) year after the date of the initial performance tests under 401 KAR 39.005, Section 2, and comply with all other applicable monitoring requirements under this chapter.

4. If an owner or operator does not install any continuous monitoring systems for sulfur oxides and nitrogen oxides as provided under paragraphs (a) and (e) or paragraphs (b) and (d) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide is not required.

5. For an indirect heat exchanger that does not use a flow gas measurement device, a continuous monitoring system for measuring sulfur dioxide emissions is not required if the owner or operator monitors sulfur dioxide emissions by fuel sampling and analysis under subsection (6) of this section.

5. For performance evaluations under 401 KAR 39.005, Sec-
tion 4-3), and calibration checks under 401 KAR 50-006, Section 4(4), the following procedures shall be used:
(a) Reference Method 6 or 7, by reference to 401 KAR 50-016, as applicable, shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring equipment;
(b) Sulfur dioxide or nitrogen oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 of Appendix B to 40 C.F.R. 60, filed by reference to 401 KAR 50-016;
(c) For affected facilities burning fossil fuel, the span value for a continuous monitoring system measuring the open-ended emissions shall be eighty (80), ninety (90), or one hundred percent and for a continuous monitoring system measuring sulfur oxides or nitrogen oxides the span value shall be determined as shown in Appendix C of this administrative regulation;
(d) All span values computed under paragraphs (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 600 ppm;
(e) For an indirect heat-exchanger that simultaneously burns fossil fuel and nonfossil fuel, the span value of all continuous monitoring systems shall be subject to the cabinet's approval.
(4) A continuous monitoring system for measuring either oxygen or carbon dioxide in the flue gases shall be installed, calibrated, maintained and operated by the owner or operator.
(5) For any continuous monitoring system installed under subsection (1) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable standards (mg/L bmillion BTU).
(a) When a continuous monitoring system for measuring oxygen is selected, the measurement of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the cabinet and the U.S. EPA shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedures shall be used: 
\[ E = \left( \frac{20}{100 CF} \right) \times 0.01 \text{ mg/L} \times \text{dry BTU} \]
where: \( E \) = concentration in mg/L bmillion BTU;
(5) When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of the pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used: 
\[ E = \left( \frac{20}{100 CF} \right) \times 0.01 \text{ mg/L} \times \text{dry BTU} \]
where: \( E \) = concentration in mg/L bmillion BTU;
(6) When the values used in the equations under subsection (5)(a) and (b) of this section are derived as follows:
(a) When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of the pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used: 
\[ E = \left( \frac{20}{100 CF} \right) \times 0.01 \text{ mg/L} \times \text{dry BTU} \]
where: \( E \) = concentration in mg/L bmillion BTU;
(7) When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of the pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used: 
\[ E = \left( \frac{20}{100 CF} \right) \times 0.01 \text{ mg/L} \times \text{dry BTU} \]
where: \( E \) = concentration in mg/L bmillion BTU;
(8) Nitrogen oxides shall be determined under subsection (6) of this section.
(9) The cabinet may require for any indirect heat-exchanger under 250 million BTU per hour heat input or less any or all of the emissions and fuel requirements by the cabinet.

Section 8 - Test Methods and Procedures
(1) The reference methods in Appendix A of 40 C.F.R. 60 except as provided in 401 KAR 50-016 shall be used to determine compliance with the standards as prescribed in Sections 4, 6, and 6 of the administrative regulation:
(a) Reference Method 1 for the selection of sampling sites and sampling traverses;
(b) Reference Method 3 for gas analysis to be used when applying Reference Methods 5, 6, and 7;
(c) Reference Method 6 for concentration of particulate matter and the associated moisture content;
(d) Reference Method 7 for the concentration of sulfur dioxide;
(e) Reference Method 7 for the concentration of nitrogen oxides;
(f) Reference Method 0 for visible emissions.
(2) For Reference Method 6, Reference Method 1 shall be used to select the sampling sites and the number of traverse sampling points. The sampling time for each run shall be at least thirty (30) minutes and the maximum sampling volume shall be 0.05 cubic feet (0.05 cf) or less except that sampling, sampling time, or volume when necessary by process variability or other factors, may be approved by the cabinet. The probe and filter holder heating system in the sampling train shall be at a temperature no greater than 150 degrees Centigrade (300 degrees Fahrenheit).
Fahrenheit.

(3) For Reference Methods 6 and 7, the sampling site shall be the same as that selected for Reference Method 5. The sampling point in the duct shall be at the origin of the cross-section or at a point no closer to the walls than one (1) m (3.28 ft). For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6, the minimum sampling time shall be twenty (20) minutes and the minimum sample volume shall be 0.02 from (0.71 dosem) for each sample. The arithmetic mean of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1), (2), (3), and (4) of this section, the emissions expressed in g/million cft, (lb/million BTU) shall be determined by the following procedure:

E = (20.9 CFC) (0.6 % oxygen) x 10^6

where:

(a) E = pollutant emission, g/million cft, (lb/million BTU),

(b) C = pollutant concentration, g/decm (lb/decf), determined by Reference Method 6, 6 or 7.

(7) % oxygen = oxygen content by volume (expressed as percent dry basis).

(8) Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures of Reference Method 6 or 7 as applicable. The sample shall be obtained as follows:

1. For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the sample for Reference Methods 6 and 7 determinations, respectively. For Reference Method 7, the oxygen sample shall be obtained using the grab sampling and analysis procedure of Reference Method 3.

2. For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 6 or 7 as described in subsection (2) of this section. Reference Method 1 shall be used for selection of the number of traverse points except that no more than twelve (12) sample points are required.

(9) For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 6 or 7 as described in subsection (2) of this section. Reference Method 1 shall be used for selection of the number of traverse points except that no more than twelve (12) sample points are required.

APPENDIX A TO 401-KAR 59-015
DETERMINATION OF ALLOWABLE SULFUR DIOXIDE EMISSION

Allowable sulfur dioxide emission in pounds per million BTU per hour input =

\[ y(0.20) + y(0.30) + x(0.70) + w(0.60) \]

where:

x is the percent of total heat input derived from gaseous fuel,

y is the percent of total heat input derived from liquid fuel,

z is the percent of total heat input derived from solid fuel,

w is the percent of total heat input derived from ignites.

APPENDIX C TO 401-KAR 59-015
DETERMINATION OF SPAN VALUE

<table>
<thead>
<tr>
<th>Fossil Fuel</th>
<th>Span-Value for Sulfur Dioxide</th>
<th>Span-Value for Nitrogen Oxides</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas</td>
<td>600</td>
<td></td>
</tr>
<tr>
<td>Liquid</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>Solid</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>Combinations</td>
<td>500 (x+y) + 1,000 = 500(x+y) + 1,000</td>
<td></td>
</tr>
</tbody>
</table>

[Not applicable]

Where:

x is the fraction of total heat input derived from gaseous fossil fuel,
y is the fraction of total heat input derived from liquid fossil fuel,
z is the fraction of total heat input derived from solid fossil fuel.

APPENDIX D TO 401-KAR 59-015
DETERMINATION OF F OR Fo FACTOR

\[ F = \frac{287.2(\%H) + 95.6(\%C) + 35.6(\%S) + 8.7(\%N) - 28.7(\%O)}{GCV} \]

\[ GCV \text{ (metric units)} \]

\[ F = 10^8 \quad \text{GCV} \quad \text{(English units)} \]

\[ F = 20 \times 10^6 \quad \text{(C)} \]

\[ GCV \quad \text{(metric units)} \]

\[ F = 321 \times 10^6 \quad \text{(C)} \]

\[ GCV \quad \text{(English units)} \]

Where:

H, C, S, N, and O are constant by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basic as GCV by ultimate analysis of the fuel feed, using ASTM method D 240 (solid fuels) or D1826-64 (liquid fuels). Test results for the fuel feed and the fuel feed and solid fuel as applicable.

GCV in the gross calorific value (cal/g, BTU/lb) of the fuel combusted, determined by ASTM test methods D2015-66 (72) for solid fuels and D1826-64 (70) for gaseous fuels as applicable.

APPENDIX E TO 401-KAR 59-015
DETERMINATION OF F OR F_0 FACTOR

FOR FIRING COMBINATIONS

\[ F = x_F_a + y_F_b + z_F_c \]

Where:

x, y, z = the fraction of total heat input derived from gaseous, liquid, and solid fuels, respectively.

F_a, F_b, F_c = the value of F for gaseous, liquid, and solid fuels, respectively, under Section 7(6)(a) and (d) of the administrative regulation.

\[ n = \sum_{i=1}^{n} x_F(i)F_a \]
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Where:
X = the fraction of total heat input derived from each type fuel
(e.g., natural gas, butane, crude oil, bituminous coal, etc.)
(Fce) = the applicable Fc factor for each fuel type determined
in accordance with Section 7(6)(c) and (d) of this administrative
regulation.

HENRY A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 14, 2009
FILED WITH LRC: January 15, 2009 at 11 a.m.
CONTACT PERSON: Millie Ellis, Environmental Technologist III,
Division for Air Quality, 200 Fair Oaks Lane, Frankfort,
Kentucky 40601, phone (502) 564-3999, fax (502) 564-4656, e-mail
mille.ellis@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis, Environmental Technologist III

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative
regulation establishes standards of performance for new indirect
heat exchangers with heat input capacity between one (1)
million and 250 million BTU heat input per hour.
(b) The necessity of this administrative regulation: This administrative
regulation regulates indirect heat exchangers as part of
the Kentucky State Implementation Plan (SIP).
(c) How this administrative regulation conforms to the content
of the authorizing statute: KRS 224.10-100 authorizes the Energy
and Environment Cabinet to promulgate administrative regulations
for the prevention, abatement, and control of air pollution. This
administrative regulation provides for the control of emissions from
new indirect heat exchangers with heat input capacity between one
(1) million and 250 million BTU heat input per hour or more that
are not subject to federal New Source Performance Standard
(NSPS) as required under the Kentucky SIP.

(2) If this is an amendment to an existing administrative regulation,
provide a brief summary of:
(a) How the amendment will change the existing administrative
regulation: The amendment to this administrative regulation updates
reference methods that are available to regulated entities for
monitoring emissions from indirect heat exchangers. The amendment
also brings the regulatory language into conformance with
KRS Chapter 13A
(b) The necessity of the amendment to this administrative
regulation: It is necessary to amend this administrative regulation
to provide regulated entities with an approved alternative to the
established reference method for measuring opacity. The amendment
allows the use of particulate matter continuous emission
monitoring systems (PM CEMS) in addition to the established use
of a continuous monitoring system for opacity (COMS). While this
is the only substantive amendment being proposed, the existing
regulatory language has been totally re-written to bring the adminis-
trative regulation into conformance with the requirements of KRS
Chapter 13A.

(c) How the amendment conforms to the content of the author-
izing statute: The administrative regulation, as amended, conforms
to KRS Chapter 224 in that it provides the same test method
alternatives that are allowed under the federal regulation, 40
C.F.R. Part 60, Subpart D.
(d) How the amendment will assist in the effective administra-
tion of statutes: The administrative regulation, as amended, will
provide sources with additional reference methods that are approved
by the cabinet and the U.S. EPA.
(e) List the types and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation. This administrative regulation will continue to apply
to indirect heat exchangers with heat input capacity between one
(1) million and 250 million BTU heat input per hour or more.
(f) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this adminis-
trative regulation, if new, or by the change, if it is an amendment,
including:
(a) The actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment. While owners or operators of indirect
heat exchangers subject to this administrative regulation will con-
tinue to be required to monitor the emissions from these units and
to maintain the units so that emissions are within permitted limits,
the amendment results in no new requirements for sources. In-
stead, the amendment provides additional flexibility to sources for
demonstrating compliance.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question
(3)? There are no added costs resulting from this amendment,
but rather, the amendment will result in cost savings to regulated
sources.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3). As a result of this amendment,
sources will have greater flexibility in choosing reference methods
for monitoring emissions and demonstrating compliance for the
opacity standard.
(d) Provide an estimate of how much it will cost to implement
this administrative regulation:
(1) Initially: There are no additional costs associated with this
amendment.
(2) On a continuing basis:
(i) There are no new costs associated with the amendment to this
administrative regulation, continuing costs are included in the Division for Air Quality's
normal day-to-day operating budget.
(3) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No
new revenue is required because the funding for this program has been
included in the Division for Air Quality's operating budget.
(3) Provide an assessment of whether an 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.

(5) Provide an assessment of whether this administrative
regulation is tiered by heat input capacity size and by the variations
in fuels used

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a
local government, including any service provided by that local
government? Yes
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? This administrative
regulation has the potential to affect any unit, part or division
of state or local government operating an emissions unit that meets
the applicability determination of Section 2 of this administrative
regulation.
3. Identify each state or federal statute or federal regulation
that requires or authorizes action taken by the administrative
regulation. 40 C.F.R. 52.90(c), 40 C.F.R. Part 60, and KRS 224.10-
100 authorize the action taken by this administrative regulation.
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the regulation is to be in effect.

(a) How much revenue will this administrative regulation generate
for the state or local government (including cities, counties,
fire departments, or school districts) for the first year? The adminis-
trative regulation will generate no new revenue.
(b) How much revenue will this administrative regulation generate
for the state or local government (including cities, counties,
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fire departments, or school districts) for subsequent years? The administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs are already included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

Note: If the federal formula estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. 52.920(c) and 40 C.F.R. Part 60.

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

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate consists of the approval of this administrative regulation to the Kentucky SIP. It requires any source to comply with Section 2 of the administrative regulation to meet the specified standards for particulate matter, sulfur dioxide, and nitrogen oxides. It also requires monitoring, reporting, and the use of specific reference methods.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation is not more stringent than the federal mandate.

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

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 61:005. General provisions.

RELATES TO: KRS 224.10-100, EO 2008-507, 2008-531, 40 C.F.R. Part 60 (Chapter 224)

STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(3) authorizes [require] the [Environmental and Public Protection] cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection and establish the new Energy and Environment Cabinet. This administrative regulation provides [to provide] for the establishment of monitoring requirements, performance testing requirements, and other general provisions as related to existing sources.

Section 1. Applicability. This administrative regulation shall apply to sources subject to an administrative regulation in 401 KAR Chapter 61.

Section 2. Performance Test. (1) Sources shall conduct performance tests pursuant to 401 KAR 50.045 and shall provide the results to the cabinet in a written report.

(2) Unless required by the cabinet, in writing, pursuant to 401 KAR 50.045, the following emissions units shall be exempt from subsection (1) of this section:
(a) Process operations with a process weight rate of less than 100 tons per hour;
(b) Indirect heat exchangers with less than 250 million BTU heat input;
(c) Incinerators with a charging rate of forty-five (45) metric tons per day (fifty (50) tons per day) or less;

Section 3. Emission Monitoring. (1) Sources in a category listed in subsection (2) of this section shall:
(a) Install, calibrate, operate, and maintain monitoring equipment necessary for continuous monitoring and recording the pollutants specified in this section for the applicable source category and
(b) Complete the installation and performance testing of monitoring equipment required in paragraph (a) of this subsection and begin monitoring and recording within eighteen (18) months of promulgation of an applicable performance specification in 40 C.F.R. Part 60, Appendix B.

(2) Sources categories and respective monitoring requirements shall be as follows:
(a) Indirect heat exchangers, as specified in subsection (5)(a) of this section, shall be monitored for opacity or particulate matter emissions, sulfur dioxide emissions, and oxygen or carbon dioxide;
(b) Sulfuric acid plants, as specified in subsection (5)(b) of this section, shall be monitored for sulfur dioxide emissions;
(c) Nitric acid plants, as specified in subsection (5)(c) of this section, shall be monitored for nitrogen oxides emissions;
(d) Petroleum refinery units shall be monitored as specified in subsection (5)(d) of this section;
(e) Incinerators, as specified in subsection (5)(e) of this section, shall be monitored for opacity and
(f) Control devices, as specified in subsection (5)(f) of this section, shall be monitored for opacity.

(3) Sources retired by June 30, 1984, shall be exempt from the requirements of this section if operation ceased on or before that date.

(4) During periods of monitoring system malfunction, a temporary exemption from the monitoring and reporting requirements of this section may be provided pursuant to 401 KAR 50.055 if the source demonstrated that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(5) Monitoring requirements.
(a) Except as provided in this paragraph, for indirect heat exchangers with an annual average capacity factor of greater than thirty (30) percent that are subject to an emissions standard in 401 KAR 61.015, the following monitoring requirements shall apply, as applicable:
(1) For indirect heat exchangers of greater than 250 million BTU per hour heat input:
(i) A continuous monitoring system for opacity or particulate matter meeting the appropriate performance specification in subsection (6) of this section, except that an indirect heat exchanger shall not be required to have a continuous monitoring system if:
(Gas unloaded fuel oil, or a mixture of gas and oil are the only fuels burned and the indirect heat exchanger is in compliance with the applicable opacity or particulate matter standards without the use of particulate matter collection equipment; and
(i) The source has never been found, through an administrative or judicial proceeding, to be in violation of a visible emission standard; and
(ii) CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section, except that indirect heat exchangers burning only natural gas, wood waste, or biomass shall be exempt from this requirement;
and
(iii) If measurements of oxygen or carbon dioxide in the flue gas are necessary to convert sulfur dioxide or nitrogen oxides continuous emission monitoring data to the units of the emission standard, CEMS for percent oxygen or carbon dioxide meeting the appropriate performance specifications in subsection (6) of this section.
(b) For sulfuric acid plants producing sulfuric acid with a contact process that burns elemental sulfur, alluviation acid, hydrogen
sulfide, or acid sludge, the following monitoring requirement shall apply:

1. CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section for each sulfuric acid producing unit at the source that:
   a. Has greater than 200 tons per day production capacity as exposed in 100 percent acid; and
   b. Produces sulfuric acid by the contact process that burns elemental sulfur, alkylated acid, hydrogen sulfide, or acid sludge; and
   c. Units that do not use the conversion to sulfuric acid as a primary means to prevent the emissions of sulfur dioxide and other sulfur compounds into the atmosphere shall not be required to have CEMS.

2. For nitric acid plants, the following monitoring requirement shall apply: CEMS for nitric oxides meeting the appropriate performance specifications in subsection (6) of this section for nitric acid producing units that:
   a. Produce nitric acid thirty (30) to seventy (70) percent by weight in strength by either the pressure or atmospheric pressure process; and
   b. Have greater than 200 tons per day production capacity expressed as 100 percent acid.

3. For petroleum refineries the following monitoring requirements shall apply:
   a. For catalyst regenerators used in conjunction with fluid bed cracking units of greater than 30,000 barrels per day from fluid feed capacity, a continuous monitoring system for opacity or PM CEMS meeting the appropriate performance specifications in subsection (6) of this section:
   ii. The span shall be set at 100 ppm; and
   iii. Reference Method 6 shall be used for conducting monitoring system performance evaluations; or
   b. If compliance is achieved by removing hydrogen sulfide from the fuel gas before it is burned, for fuel gas combustion devices subject to 401 KAR 61:145, an instrument that meets the appropriate performance specifications in 40 C.F.R. Part 60, Appendix B for continuously monitoring and recording concentrations of hydrogen sulfide in the fuel gases burned, in which:
      i. Fuel gas combustion devices having a common source of fuel gas may be monitored at one (1) location, if monitoring at the location secures an accurate reading of the concentration of hydrogen sulfide in the fuel gas burned; and
      ii. The span of the continuous monitoring system shall be 300 ppm.
   3. For Claus sulfur recovery plants subject to 401 KAR 61:145:
      a. If compliance is achieved with an oxidation control system or a reduction control system followed by incineration, CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section with the span set at 500 ppm:
      b. If compliance is achieved with a reduction control system not followed by incineration, CEMS meeting the appropriate performance specifications in subsection (6) of this section with the span set at twenty (20) ppm for the measurement of hydrogen sulfide emissions and 600 ppm for reduced sulfur compound emissions; and
      c. For fluid catalytic cracking unit catalyst regenerators subject to 401 KAR 61:145, CEMS for sulfur dioxide meeting the appropriate performance specifications in subsection (6) of this section, with the span set at 1,500 ppm.

4. For fluid catalytic cracking units with a capacity of more than forty-five (45) metric tons per day (50,000 tons/day) continuous monitoring system for opacity or PM CEMS for particulates meeting the appropriate performance specifications in subsection (6) of this section.

5. For control devices with a concentrated discharge associated with an emissions unit subject to 401 KAR 61:070, 61:075, or 61:080, a continuous monitoring system for opacity meeting the appropriate performance specifications in subsection (6)(a) of this section.

6. Except as provided in subsection (7) of this section, sources subject to this section shall demonstrate compliance with the following performance specifications in 40 C.F.R. Part 60, Appendix B:
   a. Continuous monitoring systems for opacity shall comply with Performance Specification 1; and
   b. PM CEMS for particulate matter shall comply with Performance Specification 11; and
   b. CEMS for sulfur dioxide shall comply with Performance Specification 2; and
   c. CEMS for nitrogen oxides shall comply with Performance Specification 2; and
   d. CEMS for oxygen shall comply with Performance Specification 3; and
   e. CEMS for carbon dioxide shall comply with Performance Specification 3.

7. Sources entering into a binding contractual obligation prior to September 11, 1974, to purchase specific continuous monitoring system components and sources installing a system prior to October 6, 1975, shall comply with the following requirements:
   a. Continuous monitoring systems for opacity shall:
      1. Measure opacity levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent and
      2. Use the Calibration Error Test and associated calculation procedures in 40 C.F.R. Part 60, Appendix B, Performance Specification 1;
   b. CEMS for nitrogen oxides and sulfur dioxide shall:
      1. Measure emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent and
      2. Use the Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures in 40 C.F.R. Part 60, Appendix B;
   c. If required by the cabinet, in writing, pursuant to 401 KAR 60:045, CEMS installed on an emissions unit prior to October 6, 1975, shall conduct tests under paragraphs (a) and (b) of this subsection as appropriate; and
   d. All continuous monitoring systems specified in this subsection shall be:
      1. Maintained and replaced with new or upgraded equipment as necessary; and
      2. Demonstrated to comply with applicable performance specifications on or before June 29, 1984.

8. For CEMS calibration gas mixtures:
   a. For systems monitoring sulfur dioxide installed on indirect heat exchangers, sulfuric acid plants or petroleum refinery fluid catalytic cracking unit catalyst regenerators, the pollutant gas used to prepare the mixture shall be sulfur dioxide pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2; Section 2.1; and
   b. For systems monitoring nitrogen oxides installed on nitric acid plants, the pollutant gas used to prepare the mixture shall be nitrogen dioxide pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2; Section 2.1.

9. The cycling time, or the total time necessary for a monitoring system to complete a cycle of operation to sample, analyze, and record an emission measurement, shall be as follows:
   a. Continuous monitoring systems for opacity shall complete a minimum of one (1) cycle of operation for each successive ten (10) second period; and
   b. CEMS for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one (1) cycle of operation for each successive fifteen (15) minute period.

10. CEMS devices shall be installed in a location that obtains representative measurements of emissions or process parameters from the emissions unit pursuant to applicable performance specifications in 40 C.F.R. Part 60, Appendix B.

11. For combined effluents from two (2) or more emissions units:
   a. If the units are of similar design and operating characteristics, CEMS may be installed on an effluent stream combined before being released to the atmosphere; or
   b. If the combined emissions units are not of similar design
and operating characteristics, or if the effluent from one (1) of the emissions units is released to the atmosphere through more than one (1) point, the source may submit to the cabinet for approval an alternate procedure demonstrating the appropriateness of installing CEMS on the combined effluent.

(12) Sources required to install continuous monitoring systems shall:
   (a) Record the zero and span drift of the monitoring system pursuant to the method prescribed by the manufacturer of the system and shall subject the continuous monitoring system to the manufacturer's recommended zero and span check at least once daily or follow the manufacturer's recommendations if adjustments at shorter intervals are recommended;
   (b) Adjust the zero and span if the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift limits exceed an applicable performance specification in Appendix B of 40 C.F.R. Part 60, Appendix B;
   (c) For continuous monitoring systems subject to subsection (7) of this section, adjust the system if the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift exceeds ten (10) percent of the applicable emission standard;
   (d) If available, use zero and zero gases certified by the manufacturer to be traceable to National Institute of Standards and Technology reference gases;
   (e) Use nitrogen dioxide for daily checks as applicable; and
   (f) Reanalyze by duplicate analyses span and zero gases every six (6) months from the date of manufacture using the appropriate reference method for 40 C.F.R. Part 60 of Appendix A as follows:
      1. Reference Method 6 for sulfur dioxide;
      2. Reference Method 7 for nitrogen dioxide; and
   (13) Instrument span shall be kept at approximately 200 percent of the expected instrument data output corresponding to the emission standards to which the source is subject.
   (14) Sources may be allowed to use equivalent procedures and requirements approved by the U.S. EPA for continuous monitoring systems as follows:
      (a) Alternate monitoring requirements to accommodate CEMS that require corrections for stack moisture conditions;
      (b) Alternate locations for installing continuous monitoring systems or monitoring devices if the source demonstrates to the cabinet that installation at alternate locations will enable accurate and representative measurements;
      (c) Alternative procedures for performing calibration checks;
      (d) Alternative monitoring requirements if the effluent from two (2) or more identical emissions units is released to the atmosphere through more than one (1) point if the procedures generate accurate emission averages; and
      (e) Alternative requirements for emissions monitoring systems that do not meet the spectral response requirements in 40 C.F.R. Part 60, Appendix B, Specification 1, but that adequately demonstrate, for each applicable emissions unit, a definite and consistent relationship between their measurements and the opacity measurements of Performance Specification 1.
   (15) For each continuous monitoring system, the source shall submit, in writing to the cabinet, for every calendar quarter, a written report of excess emissions including the nature and cause of the excess emissions, if known, as follows:
      (a) The averaging period used for data reporting shall correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the applicable pollutant and source category, and quarterly reports shall be postmarked by the 20th day following the end of each calendar quarter;
      (b) For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of six (6) minute averages of opacity greater than the opacity standard in the applicable standard for each hour of operation of the facility, as follows:
         1. Average values may be obtained by integration over the averaging period or by mathematically averaging a minimum of four (4) equally spaced, instantaneous opacity measurements per minute;
         2. All exempted time periods shall be considered before determining the excess average of opacity (for example, if an admin-

istrative regulation allows two (2) minutes of opacity measurements in excess of the standard, the source shall report all opacity averages, in any one (1) hour, in excess of the standard, minus the two (2) minute exemption); and
      3. If more than one (1) opacity standard applies, excess emissions data shall be submitted in relation to all applicable standards;
      (c) For particulate matter measurements, the summary shall be based on twenty-four (24) hour block averaging times;
      (d) For gaseous measurements, the summary shall consist of hourly averages expressed in the units of the applicable standard;
      (e) Except for zero and span checks, the data and time of each period during which the CEMS was not operating, including proof of CEMS performance during system repairs and the nature of the repairs or adjustments;
      (f) If excess emissions have not occurred and the CEMS have not been inoperative, repaired, or adjusted, this information shall be included in the report; and
      (g) The source shall maintain a file for a minimum of two (2) years from the date of collection of the data or submission to the cabinet.
   (16) Sources shall use the following procedures for converting monitoring data to units of the standard if necessary:
      (a) For indirect heat exchangers, the following procedures shall be used to convert gaseous emission monitoring data in parts per million (ppm) to million Btu (MMBtu) BTU):
      1. If the source elects to measure oxygen in the flue gases for an indirect heat exchanger pursuant to subsection (5)(a)(2) of this section, the measurements of the pollutant concentration and oxygen concentration shall be on a dry basis and the following equation shall be used for the conversion procedure: E = CF(30.9 / (20.9 %O2))
      2. If the source elects to measure carbon dioxide in the flue gases pursuant to subsection (5)(a)(2) of this section, the measurement of the pollutant concentration and the carbon dioxide concentration shall be on a consistent wet or dry basis and the following equation shall be used for the conversion procedure: E = CFc(100 / %CO2)
      3. For subparagraphs (1) and (2) of this paragraph:
         a. E = pollutant emission, g/dscm (lb/mole);
         b. C = pollutant concentration, g/dscm (lb/mole), determined by multiplying the average concentration (ppm) for each hourly period by 4.16 X 10^-4 M g/dscm per ppm (2.6 X 10^-4 M lb/ft3 per ppm) where M = pollutant molecular weight, g/mole (lb/mole), M = 64 for sulfur dioxide and 46 for gases of nitrogen; carbon; and oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified in subsection (6) of this section and
         c. Fc = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F); and
         d. Fc = a factor representing a ratio of the volume of the carbon dioxide generated to the calorific value of the fuel combusted (Fc)
      (c) Values of F and Fc are given in 401 KAR 69-015 as applicable.
      (b) For sulfuric acid plants the owner or operator shall:
         1. Establish a conversion factor three (3) times daily pursuant to 40 C.F.R. 60.84;
         2. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in kilometric ton (lb/short ton) and
         3. Record the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly report required in subsection (15) of this section.
   (c) The source may use data reporting or reduction procedures that vary from the provisions of this section if the source demonstrates to the cabinet that the alternate procedures are at least as accurate and protective as the requirements of this section and the alternate procedures or procedures managing a change in the procedure include:
      1. Alternative procedures for computing emission averages that do not require integration of data; and
      2. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.
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(17) Sources may apply for approval of an alternative or equivalent method specified in 40 C.F.R. Part 60 or a test method specified in the Kentucky State Implementation Plan, if the alternative provisions are included in the source's permit and the source demonstrates:
(a) The inability of CEMS to provide accurate determinations of emissions at the emissions unit;
(b) The infrequent operation of the emissions unit;
(c) The requirements of this section impose an extreme economic burden on the source, or
(d) The CEMS is unable to be installed due to physical limitations at the source. (Section 1. Applicability. The provisions of this chapter shall apply to the owner or operator of any existing source for which a standard of performance has been promulgated under this chapter.

Section 2. Performance Test. (1) On or before the completion of a facility at an affected facility and at each other time as may be required by the owner or operator of an affected facility, except for those affected facilities specified in the subsection of each paragraph of such facility, shall conduct a performance test(a), according to 401-KAR-50.045 and furnish the cabinet a written report of the results of such performance test(a).
(a) Process operation with a process weight rate of less than 400 tons per hour;
(b) Indirect heat exchangers of less than 250 million BTU heat input;
(c) Incinerator with a charging rate of forty-five (45) metric tons per day (fifty (50) tons/day) or less;

(2) The cabinet may require the owner or operator of any affected facility specified in subsection (1)(a) to (d) of this section to conduct a performance test(a) according to 401-KAR-50.045 and furnish a written report of the results of such performance test(a).

Section 3. Emission Monitoring. This section sets forth the minimum requirements for continuous emission monitoring, recording, and reporting for source categories which are set forth. It includes the performance specifications for accuracy, reliability, and durability of acceptable monitoring systems and techniques to convert emission data to units of applicable emission standards.
(a) The owner or operator of a source in a category listed below shall:
(1) Install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants specified in the subsection of the applicable source category;
(2) Complete the installation and performance test of such equipment and begin monitoring and recording within eighteen (18) months from June 26, 1979, except as provided in paragraph (c) of this subsection;
(3) For continuous emission monitoring systems for which there are no performance specifications under Appendix B of 40 C.F.R. 60, filed by reference in 401-KAR-60.016, as of June 26, 1979, complete the installation and performance test of such equipment and begin monitoring and recording within eighteen (18) months of promulgation of the applicable performance specifications under Appendix B of 40 C.F.R. 60.

(2) The source categories and the respective monitoring requirements are listed below.
(a) Indirect heat exchangers specified in subsection (6)(a) of this section shall be monitored for opacity, sulfur dioxide emissions, and oxygen or carbon dioxide.
(b) Sulfuric acid plants specified in subsection (6)(c) of this section shall be monitored for sulfur dioxide emissions.
(c) Nitric acid plants specified in subsection (6)(c) of this section shall be monitored for nitrogen oxides.
(d) Petroleum refinery affected facilities as specified in subsection (6)(d) of this section shall be monitored as specified in subsection (6)(d) of this section.

(6) Incinerators, as specified in subsection (6)(e) of this section, shall be monitored for opacity.
(f) Control devices, as specified in subsection (6)(f) of this section, shall be monitored for opacity.
(g) Exemptions—Sources which are scheduled for retirement within five (5) years after June 26, 1979, are exempt from the requirements of this section, provided that adequate evidence and guarantees are provided that clearly show that the source will cease operating on or before that date.

(4) Extensions—Reasonable extensions of the time provided for installation of monitors may be allowed for sources unable to meet the test dates prescribed in subsection (1)(b) of this section, provided the owner or operator of each facility demonstrate that good faith efforts have been made to obtain and install such devices within such prescribed time frame.

(5) Monitoring system failures—The cabinet may provide a temporary exemption from the monitoring and reporting requirements of this section during any period of monitoring system malfunction, provided that the source owner or operator shows to the cabinet's satisfaction that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Monitoring requirements:
(a) Indirect heat exchangers—Each indirect heat exchanger except as provided in the following subparagraph, with an annual average capacity factor of greater than thirty (30) percent as determined to the cabinet by the owner or operator of the facility shall be in compliance with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question. (Annual average capacity factor means the ratio of the actual annual heat input to the potential annual heat input based on rated capacity.)

1. A continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated in accordance with the procedures specified in this section and the owner or operator of any such indirect heat exchanger shall install, calibrate, maintain, and operate on any indirect heat exchanger as required for conversion of nitrogen oxides to continuous emission monitoring data, or both, to units of the emission standard.

2. A continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated by each indirect heat exchanger using the sulfur dioxide measurement data as required for conversion of sulfur dioxide to continuous emission monitoring data, or both, to units of the emission standard.

3. A continuous monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated by each indirect heat exchanger using the oxygen or carbon dioxide measurement data as required for conversion of oxygen or carbon dioxide to continuous emission monitoring data, or both, to units of the emission standard.

4. Sulfuric acid plants—For the purposes of the administrative regulation, "sulfuric acid plant" means any facility producing sulfuric acid and by the process of burning elemental sulfur, sulfuric acid, hydrochloric acid, or acid sludge, but does not include facilities whose conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds. The owner or operator of each sulfuric acid plant of greater than 200 tons per day production capacity, the production capacity being expressed as 200 percent acid, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section for each sulfuric acid producing facility within such plant.

5. Nitric acid plants—For the purposes of the administrative
regulation "nitric acid plant" means any facility producing nitric acid thirty (30) to seventy (70) percent by weight in strength by either the pressure or atmospheric pressure process. The owner or operator of each nitric acid plant of greater than 200 tons per day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of nitric oxide, which meets the appropriate performance specifications as specified in subsection (7) of this section for each nitric acid-producing facility within such plant.

(4) Petroleum refineries. The owner or operator of each affected facility specified in this paragraph shall install, calibrate, maintain, and operate a continuous monitoring system as follows:

1. A continuous monitoring system for the measurement of opacity for catalyst regenerators for fluid bed cracking units of greater than 20,000 barrels per day fresh feed capacity which meets the appropriate performance specifications specified in subsection (7) of this section.

2. A continuous monitoring system for the measurement of sulfur dioxide in the gas discharged into the atmosphere from the combustion of fuel-gases subjected to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section (except where a continuous monitoring system for the measurement of hydrogen sulfide is installed under subparagraph (3) of this paragraph). The pollutant gas used to prepare calibration gas mixtures under Performance Specification 2 of 40 C.F.R. 60—paragraph 2.1 and for calibration checks shall be sulfur dioxide. The span shall be set at 100 ppm.

(5) An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved through the use of a reduction control system followed by incineration. The span of this continuous monitoring system shall be 200 ppm.

(6) An instrument for continuously monitoring and recording the concentration of sulfur dioxide in the gas discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved through the use of a reduction control system followed by incineration. The span of this continuous monitoring system shall be set at 500 ppm.

(7) An instrument for continuously monitoring and recording the concentration of hydrogen sulfide and reduced sulfur compounds in the gas discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved through the use of a reduction control system followed by incineration. The span of this continuous monitoring system shall be set at 200 ppm for monitoring and recording the concentration of hydrogen sulfide and 600 ppm for monitoring and recording the concentration of reduced sulfur compounds.

(8) An instrument for continuously monitoring and recording the concentration of sulfur dioxide in the gas discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section. The span of this continuous monitoring system shall be 1,500 ppm.

(a) Incinerators. Each incinerator with a charging capacity of more than forty-five (45) metric tons per day (fifty, 50 tons/day) shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

(b) Each control device with a concentrated discharge associated with the affected facilities subject to 401 KAR 61:070, 401 KAR 61:676, or 401 KAR 61:080 shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

(9) Except as provided in subsection (8) of this section, all owners or operators which are required to comply with this section shall demonstrate compliance with the following performance specifications appended to 40 C.F.R. 60.

(a) Continuous monitoring systems for measuring opacity shall comply with Performance Specification 4.

(b) Continuous monitoring systems for measuring sulfur dioxide shall comply with Performance Specification 2.

(c) Continuous monitoring systems for measuring nitrogen oxides shall comply with Performance Specification 2.

(d) Continuous monitoring systems for measuring oxygen shall comply with Performance Specification 2.

(e) Continuous monitoring systems for measuring carbon dioxide shall comply with Performance Specification 2.

(10) An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components or who installed continuous monitoring equipment prior to October 6, 1976 shall comply with the following requirements:

(a) Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 4 of Appendix B to 40 C.F.R. 60 shall be used for determining compliance with this specification.

(b) Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calibration procedures set forth in Performance Specification 4 of Appendix B to 40 C.F.R. 60 shall be used for determining compliance with this specification.

(c) Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1976, may be required to conduct tests under paragraphs (a) and (b) of this subsection if requested by the cabinet.

(d) At continuous monitoring systems referenced by this subsection shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and the new or improved systems shall be demonstrated to comply with applicable performance specifications within five (5) years from June 29, 1976.

(11) Calibration gases. For sulfur dioxide monitoring systems installed on indirect heat exchangers, sulfuric acid plants, or petroleum refinery fluid catalytic cracking unit regenerators, the pollutant gas used to prepare calibration gas mixes shall meet the performance specifications set forth in Appendix B to 40 C.F.R. 60.

(12) Nitrogen oxides. For nitrogen oxide monitoring systems, installed on nitric acid plants, the pollutant gas used to prepare calibration gas mixes shall meet the performance specifications set forth in Appendix B to 40 C.F.R. 60.

(13) Gas chromatography. Gas chromatography shall be performed at least once every six (6) months from the date of manufacture, span and zero gases certified by their manufacturer to be traceable to National Bureau of Standards reference gases shall be used whenever these reference gases are available. Every six (6) months from manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A to 40 C.F.R. 60 as follows: for sulfur dioxide, use Reference Method 6; for nitrogen dioxide use Reference Method 7; and for carbon dioxide and oxygen use Reference Method 8.

(14) Sampling. Monitoring equipment is included in the total-time monitoring-system required to sample, analyze, and record an emission measurement.

(a) Continuous monitoring systems for measuring opacity shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive ten (10)-second period.

(b) Continuous monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and recording the data) for each successive ten (10)-second interval.
nuous-monitoring systems shall submit for every calendar quarter, a written report of excess emissions and the nature and cause of the excess emissions if known. The averaging period used for data reporting should correspond to the averaging period specified in the emission-test method used to determine compliance with an emission standard for the source category in question. The required report shall include, as a minimum, the data stipulated in this subsection. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter.

(b) For opacity measurements, the summary shall consist of the magnitude in actual percent of opacity of six (6) minute averages of opacity greater than the opacity standard in the applicable standard for each hour of operation of the facility. Averages values may be divided by integrations over the average hour by arithmetically averaging a minimum of four (4) equally spaced, instantaneous opacity measurements per minute. Any time period exempted shall be considered before determining the excess average of opacity (e.g., whenever a administrative regulation allows two (2) minutes of opacity measurements in excess of the standard, the source shall report all opacity averages, in any one (1) hour, if excess of the standard, minus the two (2) minute exemption). If more than one (1) opacity standard applies, excess emissions data must be submitted in relation to all such standards. Opacity data need be reported on computer cards or tape only.

(c) For gaseous measurements the summary shall consist of hourly averages in the units of the applicable standard. The hourly averages shall not appear in the written summary, but shall be included elsewhere by summing the appropriate on an hourly basis. The summary shall also contain the number of valid and invalid monitoring periods for each period for each monitored parameter. The invalid monitoring periods shall be reported for each parameter.

(d) The dates and times identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks and the performance of the system, are measured or calculated, shall be reported. Proof of continuous monitoring system performance whenever system repairs or adjustments have been made is required.

(e) When no excess emissions have occurred and the continuous monitoring systems have not been inoperative, the source shall submit a report that contains the date and time of the source performance.

(f) Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summary, and all other data collected either by the continuous monitoring system or as necessary to convert monitoring data to the units of the applicable standard for a minimum of two (2) years from the date of collection of such data or submission of such summaries.

(17) Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.

(g) For indirect heat exchangers the following procedures shall be used to convert gaseous-emission-monitoring data in parts per million to g/million BTU.

1. When the source- or operator-elect of an indirect heat-exchanger elects under subsection (6)(a) of this section to measure oxygen in the flue-gases, the measurements of the pollutant concentration and oxygen concentration shall be in a dry basis and Equation 1 of the conversion procedures in Appendix A to this administrative regulation shall be used.

2. When the source- or operator-elect of an indirect heat-exchanger elects under subsection (6)(a)3 of this section to measure carbon dioxide in the flue-gases the measurement of the pollutant concentration and the carbon dioxide concentration shall be on a consistent basis (wet or dry) and Equation 1 of the conversion procedures in Appendix A to this administrative regulation shall be used.

(h) For sulfuric acid plants the source- or operator-elect shall:

1. Establish a conversion factor three (3) times daily according to the procedures in 401 KAR 60:036, Section 5(2).

2. Multiply the conversion factor by the average sulfur dioxide concentration in the flue-gases to obtain average sulfur dioxide emissions in kg/million ton (lb/short ton); and

3. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.

(i) The cabinet may allow data reporting or reduction procedures varying from those set forth in this section if the owner or operator of a source shows to the satisfaction of the cabinet that his procedures are at least as accurate as those in this section.
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis, Environmental Technologist III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes monitoring requirements, performance testing requirements, and other general provisions relating to sources subject to an administrative regulation in 401 KAR 61.

(b) The necessity of this administrative regulation: This administrative regulation establishes the general monitoring, performance testing, and reporting requirements for existing sources subject to an administrative regulation in 401 KAR 61.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides requirements for monitoring, performance testing, and other general provisions for sources that are subject to an administrative regulation in 401 KAR Chapter 61, as required under the Kentucky State Implementation Plan (SIP).

(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: The amendment updates reference methods that are available to regulated entities for monitoring emissions from indirect heat exchangers. Thus, the amendment provides greater flexibility in testing and monitoring. The amendment also brings the language of this administrative regulation into conformance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to provide regulated sources with an approved alternative to established reference methods. While this is the only substantive amendment being made to this administrative regulation, the existing language has been totally re-written to bring the administrative regulation into conformance with the requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation, as amended, conforms to KRS Chapter 224 as it provides the same test method alternatives allowed under the federal regulation, 40 C.F.R. Part 60, Subpart D.

(3) List the type and number of individuals, businesses, organizations, and state and local governments affected by this administrative regulation. This administrative regulation will continue to apply to existing sources that are subject to an administrative regulation in 401 KAR Chapter 61.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: While owners or operators of emissions units subject to this administrative regulation will continue to be required to monitor the emissions from these units and to maintain the units so that emissions are within the permitted limits, the amendment results in no new requirements for sources. Instead, the amendment provides additional flexibility for demonstrating compliance.

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

(c) As a result of compliance, what benefits will accrue to the...
entities identified in question (3): As a result of this amendment, sources will have greater flexibility in choosing reference methods for monitoring emissions and demonstrating compliance.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no additional costs associated with this amendment.
(b) On a continuing basis: Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has already been included in the Division for Air Quality's operating budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the amendment to this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Consistent with the federal general provisions regulation for existing SIP sources, this administrative regulation is tiered by heat input capacity size and by the variations in fuels used.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to affect any unit, part or division of state or local government operating an emissions unit that meets the applicability determinations of Section 1 of this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. 40 C.F.R. 52.920(c) and Part 60 and KRS 224.10-100(14) authorize the action taken by this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no revenue.
(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.
(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.
Revenues (+/-): There is no known effect on current revenues.
Expenditures (+/-): There is no known effect on current expenditures.
Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. 52.920(c) and 40 C.F.R. Part 60.
(2) State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.
(3) Minimum or uniform standards contained in the federal mandate. The federal mandate consists of the approval of this administrative regulation to the Kentucky SIP. It requires any source described in Section 1 of the administrative regulation to meet the specified standards for particulate matter, sulfur dioxide, and nitrogen oxides. It also requires monitoring and the reference methods to be used.
(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation is not more stringent than the federal mandate.
(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter standards or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Member Services
(Amended After Comments)

907 KAR 1:585. Estate recovery.

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), EO 2004-726
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 1, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) 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. 1396p(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 (HCB) waiver services, supports for community living (SCL) services, acquired brain injury (ABI) waiver services, ABI long-term care waiver services, or Michelle P. waiver 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; and
(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 assign 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 to the department in writing that he or she is the representative for the estate.
(5) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(6) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(7) "Period of institutionalization" means the period of time an agency, institution, 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 (mentally retarded and developmentally disabled) for six (6) months or more.

(9) "Recipient family member" means the surviving spouse, child, or sibling of a deceased recipient.

(10) "State plan" is defined by 42 C.F.R. 400.202.

(11)(9) "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. NFI (Nursing Facility-Non-Fee-for-Service) services;
      2. ICDFAR/DDD (Intermediate care facility for the mentally retarded and developmentally disabled) services;
      3. Home and community based care services (HCBS); and
      4. Acquired brain injury (ABI) waiver services pursuant to 907 KAR 3:210;
   (b) Related prescription drugs, hospital services, and related physician services; or
   (c) Medicare cost-sharing or Medicare premiums.

(4) The amount subject to recovery shall include a capitalization 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) Surviving spouse or
(b) Surviving child.

(2) Recovery shall not be made from the estate if the 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 of 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 exemption.

(c) The department shall issue a decision on an undue hardship exemption request within thirty (30) days of receipt of the request and supporting documentation.

(d)1. 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 diverted assets to avoid estate recovery.

(f) The department may waive recovery if it is not cost effective to recover from the estate.

(g) 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.

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. ICDFAR/DDD services, HCBS waiver services, SCL services, ABI waiver services, ABI long-term care waiver services, or Michelle P. waiver services.

(2) When an aged institutionalized or permanently institutionalized individual who is receiving NF services, ICDFAR/DDD services, HCBS waiver services, SCL services, ABI waiver services, ABI long-term care waiver services, or Michelle P. waiver services is deceased, the department will provide notice to the estate representative.

(3) The department shall provide the notice of death specified in subsection (2) of this section, the department shall provide the notice of death to the estate representative.

(4) The estate representative shall be responsible for notifying individuals who are affected by the proposed recovery.

(5) In the event of reinstatement, the department shall notify the estate representative.

(6) 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 estate recovery for dates of death on and after September 1, 2003.]

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 12, 2009
FILED WITH LRC: January 13, 2009 at 8 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Debbie Keith (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. The amendment after comments updates the list of program expenditures for which the Department for Medicaid Services (DMS) will attempt to recover. The initial list includes home and community-based (HCBS) waiver services and supports for community living (SCL) waiver services; however, DMS has enacted additional waivers - acquired brain injury (ABI) rehabilitation waiver, ABI long-term care waiver and the Michelle P. waiver and the amendment adds those expenditures to the list of recoverable expenditures.
(b) The necessity of the amendment to this administrative regulation: The amendment to this regulation is necessary to allow provisions to be implemented that will allow exceptions for estate recovery when a recipient participates in the long-term care partnership insurance program. The amendment after comments is necessary to clarify policy.
(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 exemptions 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 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. The long-term care partnership insurance program is optional. Individuals, if they so choose, may gain estate recovery protection by purchasing long-term care partnership insurance and obtaining the insurance policy.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The long-term care partnership insurance program is optional. Individuals, if they so choose, may gain estate recovery protection by purchasing long-term care partnership insurance and receiving services via the insurance policy.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An individual who purchases long-term care partnership insurance and receives services covered by the long-term care partnership insurance policy, will experience an exemption from estate recovery equal to the dollar value of services received via the long-term care partnership insurance policy. For example, if an individual receives $10,000 worth of services via the policy then qualifies for Medicaid then passes away, DMS will exempt $10,000 from its estate recovery efforts toward the individual's estate.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS anticipates experiencing no cost as a result of the amendment to this administrative regulation.
(b) On a continuing basis: DMS anticipates experiencing no cost as a result of the amendment to this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiersing: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all 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 es-
tates of recipients who were permanently institutionalized or received certain institutional services at age 55 or older. 42 C.F.R. 435.236 contains the federal mandate regarding institutionalized individuals eligible via a special income level.

2. State compliance standards. KRS 205.520(3) authorized the cabinet to comply with a requirement that may be imposed or optionally presented by federal law for the provision of medical assistance to Kentucky’s indigent citizen. This administrative regulation mandates recovery against estates of permanently institutionalized recipients and recipients age 55 and older who received institutional services; includes a full waiver of recovery where there is a surviving spouse or surviving child under 21, or blind or disabled; contains the mandatory provision of an undue hardship waiver process that 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. 42 C.F.R. 435.236 allows coverage for individuals institutionalized when the recipient is eligible at 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 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 (DMS), the Department for Community Based Services (DCBS), and the Department of Insurance (DOI) will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is necessary 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 sub-chapter 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 to be in effect. DMS anticipates the administrative regulation will have no impact on revenues; however, in the long run could reduce expenditures if individuals purchase and utilize long-term care partnership insurance prior to enrolling in the Medicaid program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no increase in revenue as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no increase in revenue as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS anticipates no increase in cost as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no increase in cost as a result of this administrative regulation.

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

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


(1) "Necessity, and conformity": KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program be prescribed by administrative regulations. Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation sets forth the technical requirements of the Kentucky Works Program.

Section 1. Definitions. (1) "Americans with Disabilities Act disability" or "ADA disability" is defined by 42 U.S.C. 12102.

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

(3) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2

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

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

(6) "Barriers" means a hardship the individual shall address in order to become employed and self-sufficient.

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

(8) "Core needs" means a hardship the individual shall overcome to
become employed and self-sufficient."

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

(9)(4) "Constant-care" means active care for a family member living in the home by a worker-eligible individual other than the family member.

(a) The family member spends sleeping, or
(b) in which the family member is in full-time schooling attendance or in a program or activity outside the home unaccompanied by the individual.

(9) "Disability" is defined by 42 U.S.C. 13102(2)(A). In accordance with 42 U.S.C. 12102(2), major life activities include mobility, communication, self-care, and leisure. The term includes a policy of reasonable accommodation, and a major life activity that is affected by a disability of three years or more.

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

(9)(4)(3) "Family member" means an individual:
(a) Related by blood, marriage, or adoption to a child or a worker-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or
(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the worker-eligible individual, as defined by 45 C.F.R. 261.2(n).

(11)(4)(3) "Full-time school attendance" means a workload of at least:
(a) The number of hours required by the Individual Program for participation in:
1. An adult basic education program;
2. A general educational development (GED) program; or
3. A literacy program;
(b) The number of hours required by the individual program for participation in a college or university;
(c) A semester system in a college or university of:

1. Twelve (15) semester hours or more; or
2. Six (6) semester hours or more during the summer term;
(c) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or
(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full-time.

(12)(4)(3) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(13)(4)(4) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(l).

(14)(4)(6) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child pursuant to 921 KAR 2 006, Section 1.

(15)(4)(6) "Kentucky Works" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to secure public assistance.

(15)(4)(7) "On-the-job training" is defined by 45 C.F.R. 261.2(i).

(17)(4)(6) "Part-time enrollment" means enrollment with a post-secondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.

(18) "Qualifying Parent" means a parent who meets prior labor market attachment in accordance with 921 KAR 2 006, Section 1. (14)(9)

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

(20) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).

(21)(4)(6) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

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

(23)(4)(3) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(i).

(24)(3)(3) "Wage supplementation" means a component in which an employer hires a participant and receives reimbursement from the cabinet for a portion of wages paid to the participant.

(26) "Worker-eligible individual" is defined by 45 C.F.R. 261.2(n). (25)(3)(3)(24) "Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

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

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

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

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

1. If the family receives federally funded child care assistance, the activity shall be reduced to have at least a minimum of fifty-five (55) hours combined from both parents; and
2. If the family does not receive federally funded child care, the activity shall be required to have a minimum of thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an educational activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

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

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

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2 006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2 006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the program participation requirement in Kentucky Works, a countable activity may include participation in obtaining education, training, experience and employment necessary to secure public assistance.

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment [progressing satisfactorily], as defined by the educational institution or program, in post secondary or vocational education not to exceed twenty-four (24) cumulative months during which the participant will not be required to participate in other activities;
8. Full or part-time enrollment, [progressing satisfactorily] as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;
9. Attendance at secondary school or equivalent if the recipient:
   a. Has not completed secondary school or equivalent;
   b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;
   c. Makes satisfactory progress as defined by the educational institution or program in accordance with 45 C.F.R. 261.2(h);
10. Provision of child care services to an individual participating in community service activities;
11. Job skills training directly related to employment, and
12. Based on the findings of the assessment, an allowable preparation activity that includes:
   a. Domestic violence counseling;
   b. Life skills training;
   c. A substance abuse program;
   d. Mental health counseling;
   e. Vocational rehabilitation;
   f. Literacy; or
   g. Adult education; and
   13. Wage supplementation, which:
      a. May be available in limited areas and may expand into additional areas; and
      (b) Shall not commence until the participant has signed form "KW-230, Wage Supplementation - Program Participant Agreement".

(2) Excused absences shall:
   (a) Include:
      1. Scheduled hours missed due to holidays; and
      2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and
   (b) Count as actual hours of participation.

(3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following:
   (a) Important verification:
      (i) "PA-333, Verification of Kentucky Works Participation; or
      (b) Monthly calendar sheet or log that requires the signature of the work-eligible individual and person supervising the work-eligible individual [Transportation and Participation in Education or Training Activity]; or
      (b) "PA-334, Second Notice of Transportation and Participation in Education or Training Activity].

Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual
   (a) Is a head of household,
   (b) Has not obtained a high school diploma or a GED;
   (c) Has not attained twenty (20) years of age; and
   (d) Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or
   2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.

(2)(a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:
   1. A single custodial parent; and
   2. Caring for a child who has not attained twelve (12) months of age.
   (b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:
      1. Consecutive; or
      2. Cumulative.

(3)(a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.
   (b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2 006, Section 24.

(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:
   (a) The only parent or caretaker relative in the family with a child who has not attained six (6) years of age; and
   (b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 21(1) 1, 2, 3, 4, 5, 6, or 7 of this administrative regulation.

(5) In accordance with 45 C.F.R. 261.2(2)(3)(ii)(B)(1)(ii)(B)(4), the cabinet shall exclude from program participation an individual providing [respite care] for more than eight (8) consecutive weeks to a disabled child member as verified by the completion of the [2PA-4, Statement of Required Caretaker Services].[5]

6. In accordance with 45 C.F.R. 261.2(2)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

7. Compliance with program participation for a work-eligible individual with an ADA disability shall not conflict with a reasonable accommodation or program modification required for the individual under the Americans with Disabilities Act and its amendments.

8. An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to this section.

Section 4. Program Participation Requirements. (1) Assessment.
   (a) The cabinet or its designee shall make an assessment of the work-eligible individual's employability on ["KW-200, Kentucky Works Assessment Form"],
   (b) The cabinet shall request another agency to assist in the assessment process if the need for a diagnostic assessment or an additional professional skill set is indicated.
   (c) The assessment shall include consideration of:
      1. Basic skills;
      2. Occupational skills;
      3. Barriers and other relevant factors;
      4. An ADA disability; and
      5. A reasonable accommodation or program modification needed, 'or an individual with an ADA disability.' The cabinet shall request other agencies to assist in the assessment process as needed.

9. (1) The assessment shall include consideration of:
      1. Basic skills;
      2. Occupational skills, and
      3. Barriers [Concerns] and other relevant factors.

10. (2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the ["KW-202, K-TAP Transitional Assistance Agreement"].

   This plan shall contain:
   (a) An employment goal for the individual;
   (b) A service to be provided by the cabinet including child care;
   (c) An activity to be undertaken by the individual to achieve the employment goal; and
   (d) A reasonable accommodation or program modification needed due to an ADA disability.

11. (1) Other needs of the family.

12. (2) A work-eligible individual shall be notified of a referral to a specific Kentucky Works Program activity in writing on form:
   (a) ["KW-105, Kentucky Works Referral Form (Participant)"]; or
   (b) "PA-218A, Now Change Referral Form", or
   (c) "KW-248, WEP Referral Form common.

13. (4) In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work [Employment Form PA-641, Workforce-Kentucky-Customer-Registration] except for a member who is:
   (a) Under age eighteen (18); or
   (b) Age sixty (60) or over;
   (c) Age eighteen (18) or under (19) years old in full-time school attendance pursuant to 821 KAR 2 006, Section 3;
   (d) Receiving benefits based on 100 percent disability;
   (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability;
   (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:
   (a) At the request of a work-eligible individual or a Kentucky Works participant;
   (b) At the request of a service provider; or
   (c) If a situation is identified that could result in a penalty pur-
suant to Section 7 of this administrative regulation
(2) The conciliation shall be conducted by the cabinet or its
designee.
(3) During conciliation, the cabinet or its designee shall deter-
mine if an additional service is needed to assist with Kentucky
Works participation.
(a) During conciliation, participation shall be monitored for
up to fifteen (15) days following the issuance of form [KW-204,
Conciliation Notice (Contact)].
(b) The fifteen (15) day period may be extended for an addi-
tional fifteen (15) days, if necessary, to determine if participation is
in compliance with the terms of the conciliation.
(5) At the conclusion of the conciliation period, the participant
shall be notified in writing of an adverse action in accordance with
921 KAR 2 046 [the results of the conciliation on form KW-206,
Conciliation Results].

Section 6. Excused from Penalties. (1) A work-eligible individ-
ual shall be excused from a penalty for failure to comply with the
Kentucky Works Program, pursuant to Section 7 of this administra-
tive regulation, if one (1) of the following good cause criteria is met:
(a) The individual is a single custodial parent who has a dem-
onstrated inability to obtain needed child care for a child under six
(6) years of age. A demonstrated inability to obtain needed child
child care for a child under six (6) years of age shall be met if the single
custodial parent;
1. Cannot locate appropriate child care,
2. Cannot locate child care at a reasonable distance from
home,
3. Determines the unsuitability of informal child care, or
4. Cannot afford child care arrangements;
(b) Dependent care is not available for an incapacitated indi-
vidual living in the same household as a dependent child;
(c) Child care is terminated through no fault of the individual;
(d) Child care does not meet the needs of the child, for exam-
ple, a child with a disability;
(e) The Individual is unable to engage in employment or
training for a mental or physical reason as verified by the cab-
inet; and

2. No reasonable accommodation or program modification
exists. [The individual is unable to engage in employment or training for
a mental or physical reason as verified by the cabinet];
(f) [The individual is required to provide care, not to
to exceed eight (8) consecutive weeks, for a family member with a
disability as documented by medical evidence using the PA-4;
(g) The individual is temporarily incarcerated or institu-olated for thirty (30) days or less;
(h) The cabinet determines there is discrimination by an
employer and a formal complaint has been filed based on:
1. Age,
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin or;
8. Political belief;
(hh) Work demand or condition renders continued employ-
ment unreasonable including:
1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;
(1) Work rate is decreased subsequent to acceptance of
employment;
(ii) The individual accepts a better job that, because of a
circumstance beyond the control of the individual, does not mate-
rialize; or
(i) Work activity is so far removed from the home
that commuting time would exceed three (3) hours per day.
(2) The duration of good cause criteria may vary according to
the individual's circumstance.

Section 7. Penalties. (a) If a work-eligible individual fails to
comply with a requirement of the Kentucky Works Program, the
recipient shall be subject to a Kentucky Works and Kentucky Tran-
sitional Assistance Program penalty. Failure to comply shall be
found if the work-eligible individual:
(a) Fails without good cause, pursuant to Section 6 of this ad-
ministrative regulation, to participate in a required activity, includ-
ing:
1. An assessment interview,
2. An assessment; or
3. Self-sufficiency plan development including completion of
KW-202;
(b) Fails without good cause, pursuant to Section 6 of this ad-
ministrative regulation, to participate in a program activity in accor-
dance with form KW-202;
(c) Refuses without good cause, pursuant to Section 6 of this
administrative regulation, to accept employment;
(d) Terminates employment or reduces earnings without good
cause, pursuant to Section 6 of this administrative regulation; or
(e) Fails to register for work unless an exception in Section
4(3)(4) of this administrative regulation applies.
(2) Except for a requirement listed in paragraph (b) of this
subparagraph:
1. A work-eligible individual who has failed to comply with a
Kentucky Works requirement without good cause, pursuant to
Section 6 of this administrative regulation, or register for work un-
less an exception pursuant to Section 4(4) of this administrative
regulation applies, shall be penalized by reducing the amount of the
assistance otherwise payable to the benefit group on a pro rata basis;
2. Assistance otherwise payable to a benefit group con-
sisting of a two (2) parent household shall be discontinued if
neither the work-eligible Individual who is a qualifying parent nor
the other parent complies with a Kentucky Works re-
quirement without good cause, pursuant to Section 6 of this
administrative regulation.
(b) Assistance to the benefit group shall be discontinued if the
work-eligible individual, fails, without good cause pursuant to Sec-


(h) Political belief or affiliation.

(5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET-241, WEP Training Site Agreement [*KWET-241, Work Experience Training Program Participant Agreement*].

(6) A training site agency shall:

(a) Comply with 29 U.S.C. 12101 to 12213;

(b) Complete any activities relating to the operation of the training site agreement upon request of the cabinet;

(c) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of nonovertime work;

2. Wages; or

3. Employment benefits;

(d) Comply with 42 U.S.C. 12101 to 12213;

(e) Report a personnel problem to the departmental representative designated by the cabinet;

(f) Maintain accurate time and attendance records daily for a WEP participant;

(g) Verify time and attendance records for a WEP participant pursuant to Section 2(c) of this administrative regulation.*Form PA-44* In order to ensure the WEP participant's compliance with subsection (7) of this section,

(h) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;

(i) Immediately report an injury to the designated representative;

(j) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(k) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(l) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to Form [KWET-241, Work Experience Training Program Participant Agreement], except as authorized by law or by writing by a WEP participant;

(m) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(n) Provide:

1. Sufficient training to ensure development of appropriate skills;

2. New task after mastery of a skill, and

3. Adequate participation instruction and supervision at all times;

(o) Provide a safe training place,

(p) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(q) Provide adequate material to complete a training activity in a safe environment; and

(r) Sign form KWET-241 with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (10) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(c) of this administrative regulation completed monthly in accordance with subsection (6)(e) and (f) of this section [Form PA-33—completed monthly by the WEP provider pursuant to subsection (6)(e) and (f) of this section].

(8) If an amendment is made to the agreement, a new form KWET-241 shall be issued [Changes to the KWET-241 shall be established in accordance on form KWET-244, WEP Training Site Agreement Amendment*].

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241 [KWET-245, Notice of WEP Discontinuance*].

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

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

(a) "KW-108: Kentucky Works—Referral Form—(Participant)!, edition 05/06;

(b) "KW-200, Kentucky Works Assessment Form", edition 2/09 [10/03];

(c) "KW-202, K-TAP Transitional Assistance Agreement", edition 02/07 [9/06];

(d) "KW-204, K-TAP Notice/Contact", edition 02/09 [10/06];

(e) "KW-206, K-TAP Notice/Contact", edition 02/09 [10/06];

(f) "KW-211, K-TAP Notice/Contact", edition 02/09 [10/06];

(g) "KW-293, Wage Supplementation Program Participant Agreement", edition 02/09 [10/06];

(h) "KW-241, WEP Training Site Agreement Amendment", edition 02/09 [10/06];

(i) "KW-244, Notice of WEP Discontinuance", edition 02/09 [10/06];

(j) "KW-246, WEP Referral Form", edition 02/09 [10/06];

(k) "KW-240, Work Experience Training Program Participant Agreement", edition 02/09 [10/06];

(l) "KW-241, WEP Training Site Agreement", edition 02/09 [10/06];

(m) "PA-4, Statement of Required Caretaker Services", edition 02/09 [10/06];

(n) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(o) "PA-44, Notice of WEP Discontinuance", edition 02/09 [10/06];

(p) "PA-44, Notice of WEP Discontinuance", edition 02/09 [10/06];

(q) "PA-44, Notice of WEP Discontinuance", edition 02/09 [10/06];

(r) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(s) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(t) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(u) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(v) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(w) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(x) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(y) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

(z) "PA-33, Verification of Kentucky Works Participation", edition 02/09 [10/06];

{1} PATRICIA L. WILSON, Commissioner

{2} JANE MILLER, Secretary

APPROVED BY AGENCY: January 12, 2009

FILED WITH AGENCY: January 13, 2009 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical requirements of activities allowed under the Kentucky Works Program (KWP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform technical requirements for all individuals participating in KWP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation conforms to the conditions of the authorizing statutes by establishing the technical requirements and allowed activities of the Kentucky Works Program (KWP). The KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Title IV-A of the Social Security Act (a.k.a., the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619). This administrative regulation sets forth these standards in conformity with the Title IV-A or TANF State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the sta-
tutes by establishing uniform technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program and penalties for failure to participate without good cause.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The Kentucky Works Program is a work program for work-eligible individuals in Kentucky Transitional Assistance Program (K-TAP) cases. This amendment aligns KWP with federal requirements by excluding those individuals who receive Social Security Disability Insurance (SSDI) benefits from participating in Kentucky Works, relaxing restrictions on individuals that are exempt from participation in KWP due to the care of a disabled family member; converting the ten day refused absence policy to an hourly basis for enhanced flexibility; allowing those pursuing a four-year degree to count as participating in the KWP; and removing the standard for satisfactory progress as a participation requirement for educational activities. In addition, this amendment makes further program refinements to streamline processes and engage a work-eligible individual during the application process to promote self-sufficiency earlier in the life of the K-TAP case and technical corrections to comply with KRS Chapter 13A. Public and agency comments resulted in additional amendment to maternal incorporated and regulatory language to clarify the agency's compliance with the Americans with Disabilities Act as amended and Section 2004 of the Rehabilitation Act, allowing the generation of incorporated materials by the system used to process public assistance cases, and more clearly delineate the agency's policy regarding good cause and penalty for two-parent cases.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the programmatic changes contained within the new federal regulations implementing the Deficit Reduction Act (DRA) of 2005. The DRA reauthorized the TANF program. In addition, this amendment is necessary to promote participation in Kentucky Works, so that Kentucky can avoid related federal financial penalties.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 42 U.S.C. 601-618, Pub. L. 105-171, the Deficit Reduction Act of 2005 and related federal regulations that reauthorized the TANF program.

(d) How the amendment will affect the effective administration of the statutes: KRS 205.00(2) requires the Cabinet to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes technical eligibility requirements for the KWP program. These requirements are necessary to the effective administration of the statutes through its incorporation of federal requirements necessitated by TANF's reauthorization.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in KWP. As of June 2008, there were 22,972 families receiving K-TAP and 7,640 individuals required to participate in KWP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) A list of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action is needed by the regulated entities to comply with this administrative amendment.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While the amendment is conforming in nature, and there are no anticipated accrued benefits for the identified entities, the amendment provides clarification to impacted entities regarding their participation requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.
(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A of the Social Security Act and state general funds used to meet Maintenance of Effort requirements are the sources of funding for the administrative regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding required with this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandates. 42 U.S.C. 601 to 619
3. Minimum or uniform standards contained in the federal mandates. The provisions of the administrative regulation comply with the Federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205 200(2), 205.200(7), 205.2003, 42 U.S.C. 601 to 619, Pub. L. 109-171
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue in the first year or subsequent years.
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? This program has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.
7. How much will it cost to administer this program for the first...
year? This program has been operational since October 1996. This amendment will not require any additional cost in the first year and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(d) How much will it cost to administer this program for subsequent years? This program has been operational since October 1996. This amendment will not require any additional cost in the first year and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 2009

COUNCIL ON POSTSECONDARY EDUCATION
(Advisory)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the council to set the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all students have available to them an opportunity for postsecondary education appropriate to their interests and abilities. This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions. The college readiness standards established in this administrative regulation shall not release institutions from the requirements contained in 13 KAR 2:060, degree program approval, equal opportunity goals.

Section 1. Definitions. (1) "Adult student" means a student who is twenty-one (21) years of age or older.
(2) "Council" is defined by KRS 164.001(7).
(3) "Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.
(4) "Institution" or "institutions" means a state-supported postsecondary education institution as defined in KRS 164.001(11).
(5) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(11).
(6) "Systemwide" or "System-wide" standard means an ACT Assessment sub-score of eighteen (18) in English, nineteen (19) in mathematics, or twenty (20) in twenty-one (21) in reading.

Section 2. Minimum Qualifications for Institutional Admission as First-time Students. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant seeking to enter a community and technical college shall have fulfilled the minimum requirements for admission to a degree program established by the Kentucky Community and Technical College System consistent with this administrative regulation if the applicant has:
1. Graduated from a public high school or a certified nonpublic high school; or
2. Earned a high school general equivalency diploma (GED).
(b) The Kentucky Community and Technical College System may provide an exception to students who are eligible to pursue a GED from the requirements of paragraph (a) of this subsection if the KCTCS publishes the exemption policy in the student catalog.
(c) An applicant to a community-college type program at a university shall; take the ACT Assessment.
1. Satisfy [ ] have satisfied [ ] the minimum requirements for admission to a two (2) year degree program established by the admittance institution consistent with this administrative regulation; and
2. Take the ACT Assessment.
3. (a) Except as provided in paragraph (b) of this subsection, an applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:
1. Graduated from a public high school or a certified nonpublic high school;
2. Completed the precollege curriculum established in Section 3 of this administrative regulation; and
3. Taken the ACT Assessment.
(b) An applicant who has earned a high school general equivalency diploma (GED) or who is a graduate of a noncertified nonpublic high school, including a home school, may be admitted to a baccalaureate program at a university by taking the ACT Assessment and by scoring at levels established by a university.
(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a university may substitute SAT for the ACT Assessment. The ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, or ACCUPLACER Testing Program may be substituted for the ACT Assessment requirement for an adult student.
(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic high school and completed a course of study. Noncertified nonpublic schools shall include a home school.
(5) A nonresident seeking admission to a baccalaureate degree program at a university shall complete:
(a) The ACT recommended college core courses for the precollege curriculum which is [are] listed in the Benefits of a High School Core Curriculum, ACT 2006, or
(b) A college preparatory curriculum comparable to Kentucky's precollege curriculum established in Section 3 of this administrative regulation.
(6)(a) A university may, under extenuating circumstances, admit a student who has not met the testing requirements of subsection (2)(a)(3) of this section if the university has a written policy defining extenuating circumstances.
(b) If a university admits a student under paragraph (a) of this subsection, the student shall satisfy the provisions of subsection (2)(a)(3) of this section during the first semester of enrollment.
(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

Section 3 Precollege Curriculum. (1) An applicant to a baccalaureate degree program at an institution shall complete twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study:
(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English.
(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, (three (3) units of high school study in mathematics, including Algebra I, Algebra II, and Geometry.
1. An integrated, applied, interdisciplinary, or technical/occupational course may be substituted for a traditional Algebra I, Geometry, or Algebra II course if the course meets the appropriate content standards described in the Program of Studies, which is incorporated by reference in 704 KAR 3:303.
2. A mathematics course whose content is more rigorous than Algebra I shall be accepted as a substitute for Algebra I.
3. An Algebra I course [may be] taken prior to high school [and] shall be counted as a required mathematics course if the academic content of the course is at least as rigorous as the appropriate high school algebraic thinking standards outlined in the Program of Studies, which is incorporated by reference in 704 KAR 3:303.
(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course.
(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization.
(e) One-half (1/2) unit in health education.
(f) One-half (1/2) unit in physical education.
(g) One (1) unit in history and appreciation of visual and performing arts.
(h) Two (2) units in the same foreign language unless:
1. The applicant's local school has diagnosed the student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1:280 or 707 KAR 1:310; and
2. Either:
   a. The school has [has] determined that the learning disability precludes the student from successfully completing a foreign language course; or
   b. The applicant demonstrates linguistic competence and awareness of a foreign language at least equivalent to two (2) years of high school language.
(2) In addition to the requirements of subsection (1) of this...
section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies
(b) Science
(c) Mathematics
(d) English/Language arts
(e) Arts and humanities
(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health
(g) Foreign language
(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways.

(3)(a) An integrated, applied, interdisciplinary, or higher level course shall be substituted for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.
(b) Integrated mathematics courses shall be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence.
(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4) An institution may establish additional requirements to supplement this minimum academic preparation.

(5)(a) An institution shall accept a waiver of a required precollege curriculum course if:
1. A student is physically unable to complete a course because of a physical handicap;
2. A student has a handicapping condition meets the requirements of 704 KAR 3:305, Section 3(2); and
3. The school district superintendent or designee verifies that a student's handicapping condition will prevent the student from completing the course in question.
(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local school may substitute another course in accordance with 704 KAR 3:305, Section 3(2).
(c) An institution shall determine whether an applicant has met these minimum academic preparation requirements.

(7) The precollege curriculum requirement shall apply to:
(a) A first-time student pursuing a baccalaureate degree with or without a declared major;
(b) A student converting from nondegree status to baccalaureate degree status;
(c) A student changing from certificate or associate-level degree to baccalaureate[-]degree level;
(d) A student who, transferring from another institution, has been admitted to baccalaureate[-]degree status by the receiving institution.

(8)(a) The following shall be exempted from the requirements of the precollege curriculum:
(a) An adult student;
(b) A student entering baccalaureate[-]degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale;
(c) Active duty military personnel, their spouses, and their dependents;
(d) A student enrolled in a community or technical college or a community college type program at a university;
(e) A nonresident student because he or she is subject to the provisions of Section 2(9) of this administrative regulation; or
(f) An International student.

Section 4. Conditional Admissions Qualifications. (1) A university shall have the option of admitting conditionally a first-time student applicant to a baccalaureate degree program who has not met the requirements of Section 3 of this administrative regulation. A first-time student admitted conditionally shall remove or otherwise satisfy academic deficiencies in a manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provisions in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate[-]degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a community college [[y-type program in a university shall be assessed and reported to the Council on Postsecondary Education.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) At the discretion of the institution, a person who does not meet college entrance requirements, including high school students, may enroll in a college course as a nondegree student.

Section 5. Transfer Students. (1) The council's General Education Transfer Policy and Implementation Guidelines, incorporated by reference, shall direct an institution's policy on the acceptance of transfer credits.

(2) An institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) An institution, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.

Section 6. Assessment and Placement of Students. (1) The Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics shall apply to:
(a) A first-time student enrolled in an associate or baccalaureate degree program or a certificate or diploma program at an institution;
(b) A student who transfers from a degree program at one (1) institution into a degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;
(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English;
(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student shall be exempt from system-wide mandatory assessment and placement policies.

(3) Except as provided in subsection (1) of this section, an institution shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. An institution may accept scores on the SAT in lieu of the ACT Assessment for placement in college-level courses.

(4) If a student determined to have not met the system-wide standards for readiness, an institution shall [for readiness] use a placement exam to help place a student in the proper course.

(5) An institution shall place a student who scores below the system-wide standard in mathematics, English, or reading in an:
(a) Appropriate developmental course in the relevant discipline; or
(b) Entry-level college course, if the course offers supplemental academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that usually associated with an entry-level course.

(6) Effective with the fall semester of 2010(2009), an institution shall satisfy the provisions of subsection (5) of this section by placing a student in the appropriate developmental course or entry-
level college course within the first two (2) academic terms[in the first-term] that a student is enrolled.

(7)(a) A student shall not be required to enroll in a developmental course in English if the student has a sub score on the ACT Assessment of eighteen (18) or higher in English. The student shall be permitted to enroll in a credit-bearing writing course.

(b) A student shall not be required to enroll in a developmental course in Mathematics if the student has a subscore on the ACT Assessment of nineteen (19) or higher in Mathematics.

1. A student who scores between nineteen (19) and twenty-one (21) shall be permitted to enroll in a credit-bearing mathematics course.

2. A student who scores twenty-two (22) through twenty-six (26) on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing algebra course.

3. A student who scores twenty-seven (27) or higher on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing calculus course.

(c) A student who has been admitted to an institution and who demonstrates a level of competence by achieving the standards established in the Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics, which is incorporated by reference, and achieves the scores contained in paragraph (a) or (b) of this subsection shall be guaranteed placement in credit-bearing coursework.

(b) An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

(a) The ACT Residual Test;
(b) The ASSET Testing Program;
(c) The COMPASS Testing Program;
(d) The ACCUPLACER Testing Program; or

(e) An institutional placement test.

(9) An institution shall be responsible for determining the remedial course needed, including the number of developmental remedial courses required, if necessary.

(10) Effective with the fall semester of 2010(2009), an institution shall enroll a student who scores below the statewide standards in an appropriate developmental or entry-level course until readiness for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, appropriate course work requiring college-level reading skills.

(11)(a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills.

(b) KCTCS may use the ACT Assessment scores or SAT scores to place a student into an appropriate developmental course.

(c) [The] KCTCS shall select a college-level student who scores below the system-wide standard in mathematics, English, or reading in an:

1. Appropriate developmental course in the relevant discipline;

2. Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

(13) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading. The list of certificate and diploma programs that exempt students from the required assessment and placement in mathematics, English, and reading shall be published by the KCTCS in the student catalog.

(14) An institution shall report to the council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time students' performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores;
(b) Institutional placement exam results;
(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided; and

(d) Grades in developmental and entry-level courses.

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

(a) "Core Content for Mathematics, High School", Version 4.1, 2006, Kentucky Department of Education;

(b) "General Education Transfer Policy and Implementation Guidelines", 2004, Council on Postsecondary Education;

(c) "Benefits of a High School Core Curriculum", 2006, ACT; and

(d) "Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics", 2004.

(2) This material is adopted, incorporated, and made a part of this act, and the rules and regulations for the avoiding, handling, and interpreting thereof, and is included in applicable copyright laws, as of February 17, 2009.

(3) An institution shall include the number of development remedial courses required, if necessary.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Council on Postsecondary Education, Conference Room A. Individuals interested in being heard at this hearing shall notify the agency in writing by February 17, 2009, five working days prior to the hearing, of their intention to attend. If no notice of intention to attend is received by that date, the hearing may be cancelled. 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 March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Michael Seelig, Intern Vice President, Academic Affairs, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, phone (502) 573-1555, ext. 259, fax (502) 573-1535, email m.seelig@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Michael Seelig

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the minimum requirements for admission to state-supported institutions and standards for the assessment and placement of students in developmental programs.

(b) The necessity of this administrative regulation: KRS 164.020(8) authorizes the Council on Postsecondary Education to set minimum admission requirements for the state-supported postsecondary education system. The Council has determined that the date for implementation of the standards for when developmental education is required needs to be delayed by one year. We also determined that the statewide standard for reading should be adjusted from twenty-one (21) to twenty (20) because of recent research that shows a high level of success for students with an ACT score of 20. The Council further wishes to require that developmental education work occur in the first academic year of a student's enrollment rather than the first semester. The additional semester will allow institutions to better schedule required course work.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidance to high school students and parents, K-12 guidance counselors, and other local school officials on what courses and other requirements are necessary for some one to enter a Kentucky state-supported postsecondary education institution. The administrative regulation sets standards for college readiness and requires assessment of students, particularly in
Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion, or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:
(a) Be for one (1) or more positions in the same:
   (A) Class; or
   (B) County;
(b) Indicate:
   (A) The number and identity of the positions to be filled;
   (B) The title of the job classification for each position; and
   (C) Other pertinent information which the appointing authority and the secretary deem necessary; and
(c) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.
(a) If one (1) position is involved, the secretary shall certify the names of:
   1. Each applicant who:
      (A) Is eligible for the position; and
      (B) If it is a tested position, has a score in the highest five (5) scores earned through the selection method, and
   2. At internal mobility candidates who are eligible and have applied for the vacant position.
   (b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency’s consideration in filling the total number of vacancies.
(c) Each appointment shall be made from:
   1. The list of eligible candidates who have applied for the vacant position; or
   2. The eligible candidates with the five (5) highest scores who have applied for the vacant position, if applicable.
   (e) The eligible candidates with the five (5) highest scores who have applied for the vacant position, if applicable.
   (2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Veterans’ Preference. (1) The following individuals shall qualify for Veterans’ Preference once a discharge certificate is submitted to the secretary which verifies honorable service and, if applicable, verifies a service-connected disability:
   (A) Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge;
   (B) Any current member of the active military, military reserves, or National Guard;
   (C) The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
      1. Was discharged or released with an Honorable Discharge; or
      2. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran’s usual occupation at the time the spouse’s application is filed;
      3. The spouse of a veteran with a service-connected disability shall be entitled to Veterans’ Preference until the date the disabled veteran recovers;
      (D) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard if the veteran:
         1. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
         2. Became permanently and totally disabled as a result of a disability sustained during the veteran’s service; or
         (E) The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge, including the surviving spouse of any military personnel who died while serving

PERSONNEL CABINET
(Amendment)


RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.150, 18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligibles for appointment.
in the military.
1. The surviving spouse shall be entitled to Veterans' Preference until the date of remarriage.
2. The surviving spouse shall not be entitled to Veterans' Preference if circumstances surrounding the death of the veteran while in the Armed Forces would have been cause for a Dishonorable Discharge.
3. (For all) All positions, Veterans' Preference shall be awarded by providing additional points on the entrance examination scores, once the secretary has determined the score is a passing score and has verified the required service.
4. (a) The following individuals shall receive five (5) additional points on entrance examination scores, but not exceeding 100 total points:
   1. Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge; or
   2. Any current member of the active military, military reserves, or National Guard
   (b) The following individuals shall receive ten (10) additional points on entrance examination scores, but not exceeding 100 total points:
      1. The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
         a. Was discharged or released with an Honorable Discharge; and
         b. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed.
      2. A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and if the veteran:
         a. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
         b. Became permanently and totally disabled during the veteran's service; or
      3. The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge.
5. (For all) For all non-tested positions, Veterans' Preference shall be awarded by the following:
   (a) Upon receipt of a request for a register, the secretary shall submit to the appointing authority the register certificate which lists all eligible applicants who meet the minimum requirements for the position. The certificate shall identify the names of eligible applicants, including internal mobility candidates, who have applied for the position and are entitled to Veterans' Preference.
   (b) The appointing authority shall offer an interview to at least five (5) of the individuals identified on the register certificate who qualify for Veterans' Preference and may offer an interview to additional candidates on the register certificate who do not qualify for Veterans' Preference.
   (c) If there are fewer than five (5) individuals identified on the register certificate who qualify for Veterans' Preference, the appointing authority shall offer an interview to all individuals identified on the register certificate who qualify for Veterans' Preference.
   (d) If an individual entitled to Veterans' Preference has been interviewed for a job vacancy in the same classification, the same work county, and by the same appointing authority within the preceding six (6) months, the agency shall not be required to offer that individual an interview.

Section 5. Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.
(2) The appointing authority may identify preferred skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may ask an applicant those preferred skills questions when submitting an Application for Employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection.

Nikki Jackson, Secretary
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 9, 2009 at 5:30 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, February 24, 2009 at 10 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within fifteen (15) business days of the hearing. This hearing is open to the public. Any person who wishes to hear will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: Dina T. Bevington, Office of Legal Services, 301 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.
This clarifies the process by which KRS 18A.150 will be effectuated.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Veteran applicants for state employment, the Personnel Cabinet and all Executive Branch agencies are affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Veteran applicants are required to submit documentation which verifies their veteran status. The Personnel Cabinet is responsible for notifying the appointing authority of an individual who is entitled to Veterans' Preference, and shall indicate this qualification on the register certificate. Employing agencies are required to then offer an interview to a set number of individuals who are entitled to receive Veterans' Preference.

(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 additional cost to each of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is proper and fitting that the Commonwealth of Kentucky assist those who forsook their career opportunities and suffered economic loss while providing service to their country. Kentucky will be encouraging the practice of hiring veterans and employing veterans in the state workforce, which is beneficial for the Commonwealth as well as the individual veterans.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs. However, if any costs are associated with this amendment, the costs will be borne by the Personnel Cabinet.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

9. TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System (Amendment)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161.640
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.600 requires members who are eligible for retirement to apply for an annuity to receive benefit payments. This administrative regulation sets out procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. Applications for retirement shall be filed on forms incorporated by reference in Section 5 of this administrative regulation.

Section 2. Applications for retirement for service shall be filed no later than the first day of the month immediately preceding the month that retirement is to be effective. Retirement for service shall be effective on the first day of the month following the date that a properly completed and timely filed application is received at the offices of Kentucky Teachers’ Retirement System. [It shall be effective] on July 1 shall be filed on or before June 1. Applications for retirement for service to be effective on June 1 shall be filed on or before May 1.] A member eligible to retire may exercise this right during a school year in which he has been in employment if there is filed with the application a statement from the chief administrative officer or other authorized representative of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement. [Applications filed for retirement for service to be effective on dates other than July 1 or June 1 shall be effective as of the first of the month following the date the application is received in the Teachers' Retirement System office.]

Section 3. An application received by mail and bearing the U.S. Postal Service postmark dated on or before the filing date set out in Section 2 of this administrative regulation shall be accepted as having been filed in compliance with that section.

Section 4. Applications for service retirement may be approved by the Board of Trustees with an effective date that is retroactive up to a maximum of three (3) months if the member was not under contract for the period. This provision shall apply to retirements that became effective on or after July 1, 1975.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a.m. to 5 p.m.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2006
FILED WITH LRC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 9 a.m. at the Kentucky Teachers’ Retirement System offices.
System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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 March 2, 2009. 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: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 648-6508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for filing applications for service retirement and for determining effective dates of annuity payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as it provides service retirement application filing deadlines, effective retirement dates for the payment of annuities and general service retirement application procedures for an orderly and consistent process as members retire.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.600(4) provides that no retirement annuity shall be effective until written application and option election forms are filed with the retirement system in accordance with administrative regulations of the Board of Trustees. KRS 161.310 requires the Board of Trustees to promulgate regulations for the transaction of the business of the retirement system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedure for processing service retirement applications as contemplated by KRS 161.600(4).

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will require service retirement applications to be filed one full month in advance of the desired retirement effective date for every month other than the last month of the plan year, not just June and July retirement dates. Currently, service retirement applications for months other than June and July may be filed up to and until the last day of the month immediately preceding each of the respective ten other months of the year.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary to provide adequate time to process and enroll retiree applications for medical insurance and thus remain consistent with the practice of deducting medical insurance premiums during the current month as required by the Personnel Cabinet and the Department of Employee Health Insurance.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.600(4) provides that no retirement annuity shall be effective until written application and option election forms are filed with the retirement system in accordance with administrative regulations of the Board of Trustees. The amendment only modifies the process for the filing of service retirement applications. KRS 161.310 requires the Board of Trustees to promulgate regulations for the transaction of the business of the retirement system.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow KTRS more time to more efficiently process retirement applications, including medical insurance coverage, as contemplated under KRS 161.600(4).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members who wish to retire in months other than June and July.

(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 agencies that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Members who wish to retire in a month other than June and July will have to file their service retirement application at least one full month in advance of each of these respective months. There were approximately 650 of these individuals in the fiscal year ending June 30, 2008.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The one-month advance filing notice for the remaining ten months of the year will provide sufficient time to process retirement and medical insurance applications to ensure timely payment of retirement allowances and payment of medical insurance premiums.

(5) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

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

(7) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:
FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System
(Amendment)

102 KAR 1:230. Limitations on benefits.

RELATES TO: KRS 161.611, 26 U.S.C. 415
STATUTORY AUTHORITY: KRS 161.310, 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers’ Retirement System of the state of Kentucky to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the Board of Trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the limitations on benefits required by 26 U.S.C. 415 of the Internal Revenue Code.

Section 1. Definitions. (1) “Defined benefit dollar limitation” means $160,000, as adjusted, effective January 1 each year, in the manner as the Secretary of the United States Treasury shall prescribe, pursuant to 26 U.S.C. 415(d) of the Internal Revenue Code, and payable in the form of a straight life annuity. A limitation as adjusted under 26 U.S.C. 415(d) shall apply to limitation years beginning with or within the calendar year for which the adjustment applies.

(2) “Limitation year” means the calendar year.

(3) “Maximum permissible benefit” means the defined benefit dollar limitation (adjusted or limited, if required, according to [Section 2-3 of this administrative regulation].

(4) “415(b) limit” means the limitation on benefits established by 26 U.S.C. 415(b).

(5) “415(c) limit” means the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. Adjustments and Limitations. (1) If the member has fewer than ten (10) years participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction. The numerator shall be the number of years (or part thereof) of participation in the plan, and the denominator shall be ten (10). The reduction provided in this subsection shall not apply to preretirement death and disability benefits.

(2) If the benefit of a member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at the earlier age shall be an annual benefit payable in the form of a straight life annuity, beginning at the earlier age, that is the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age sixty-two (62) (adjusted under subsection (1) of this section, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) shall be determined as the lesser of:

(a) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using a five (5) percent interest rate and the applicable mortality table as specified by the system actuary. Any decrease in the defined benefit dollar limitation determined in accordance with this subsection shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(c) The reductions provided for in this subsection shall not apply:

(i) If the member’s benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or at least thirteen (13) years of military service or

(ii) To preretirement disability benefits or preretirement death benefits.

(3) If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the member at the later age shall be the annual benefit payable in the form of a straight life annuity, beginning at the later age, that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted under subsection (1) of this section, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after sixty-five (65) shall be determined as follows:

(a) The lesser of the actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using a five (5) percent interest rate assumption and the mortality table specified by the system actuary. For these purposes, mortality between age sixty-five (65) and the later age at which benefits commence shall be ignored.

(4) For purposes of the 415(b) limit, the “annual benefit” means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(m)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(4)(A)). The “benefit attributable” shall be determined in accordance with Treasury Regulations.

(5) If the benefit under the retirement system is other than the form specified in subsection 3 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(6) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (5) of this section shall be applied by substituting the specified annuity single life starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(i)(a) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply a monthly benefit, the actuarial equivalent straight life annuity benefit that is the lesser of (or the reduced 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the retirement system commencing at the same annuity starting date as the form of benefit to the member, or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the “least of” when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the retirement system for actuarial experience.

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five (5) percent interest assumption for the applicable statutory interest assumption and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1, 2009), using the rate in effect for the month prior
to retirement, and on and after January 1, 2009, using the rate that is
in effect for the first day of the plan year with a one (1) year stabiliza-
tion period) and the applicable mortality rate for the distribution
under Treasury Regulation section 1.415(b)-1(d)(2)(iii) (the mortality
rate specified in Revenue Ruling 2001-62 or any subsequent
Revenue Ruling modifying the applicable provisions of Revenue
Ruling 2001-62), divided by 1.05.
(7) Effective on and after January 1, 2009, for purposes of
applying the 415(b) limit to a member with no lump sum benefit,
the following shall apply:
(a) A member's applicable 415(b) limit shall be applied to the
member's annual benefit in the member's first limitation year
without regard to any automatic cost of living increases;
(b) To the extent that the member's annual benefit equals or
exceeds the 415(b) limit, the member shall no longer be eligible
for cost of living increases until such time as the benefit plus the
accumulated increases are less than the 415(b) limit;
(c) Thereafter, in any subsequent limitation year, a member's
annual benefit, including any automatic cost of living increases,
shall be tested under the then applicable 415(b) limit including any
adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26
U.S.C. 415(d), and the applicable Treasury Regulations.
(8) On and after January 1, 2009, with respect to a member
who receives all or a portion of the member's annual benefit in a
lump sum, a member's applicable limit shall be applied taking into
consideration cost of living increases as required by 26 U.S.C.
415(b) and applicable Treasury Regulations.

Section 3. Participation in Other Qualified Plans: Aggregation of
Limits. (1) The 415(b) limit with respect to any member who at
any time has been a member in any other defined benefit plan as
defined in 26 U.S.C. 414(i) maintained by the member's employer
in a retirement system shall apply as if the total benefits payable
under all these defined benefit plans in which the member has
been a member were payable from one plan.
(2) The 415(b) limit with respect to any member who at
any time has been a member in any other defined contribution plan
defined in 26 U.S.C. 414(i) maintained by the member's employer
in a retirement system shall apply as if the total annual additions
under all these defined contribution plans in which the member has
been a member were payable from one plan. If a participant has fewer than ten (10)-years-of-service with the employer, the
defined benefit compensation limitation shall be multiplied by a
fraction. The numerator shall be the number of years of service
(except as provided in Section 2(4) of the administrative regulation)
and the denominator shall be 10.

Section 3. Effective Date. This administrative regulation shall
be effective for limitation years ending after December 31, 2001,
except as provided in Section 2(4) of the administrative regulation.

Section 4. Effect on Members. Benefit increases resulting from the
increase in the limitations of 26 U.S.C. 415(b) of the Internal
Revenue Code shall be provided to all current and former
members, with benefits limited by 26 U.S.C. 415(b), who have an accu-
credited benefit under the plan immediately prior to the effective date.
These benefit increases shall not be provided to current and former
members who have an accrued benefit related to retirement, except as
defined by 26 U.S.C. 415(b), and the regulations thereunder to be taken into
account for purposes of the limitation of 26 U.S.C. 415(b).

Section 5. Benefits Not Taken into Account for 415(b) Limit.
For purposes of this administrative regulation, the following ben-
etits shall not be taken into account in applying these limits:
(1) Any ancillary benefit which is not directly related to retire-
ment income benefits;
(2) That portion of any joint and survivor annuity that consti-
tutes a qualified joint and survivor annuity;
(3) Any other benefit not required under 26 U.S.C. 415(b)(2)
and Treasury Regulations thereunder to be taken into account
for purposes of the limitation of 26 U.S.C. 415(b).

Section 6. 415(c) Limit. After-tax member contributions or other
annual additions with respect to a member shall not exceed the
lesser of $40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or
100 percent of the member's compensation.
(1) Annual additions shall be defined to mean the sum (for any
year) of employer contributions to a defined contribution plan, post-
tax member contributions, and forfeitures credited to a member's
individual account. Member contributions shall be determined with-
out regard to follower contributions and in respect of employee
contributions that are paid to a defined benefit plan.
(2) For purposes of applying the 415(c) limits only and for no
other purpose, the definition of compensation if applicable shall be
compensation actually paid or made available during a limitation
year, except as noted below and as permitted by Treasury Regula-
tion Section 1.415(c)-2, or successor regulation. Except that mem-
ber contributions picked up under 26 U.S.C. 414(h) shall not be
treated as compensation.
(3) Unless another definition of compensation that is permitted
by Treasury Regulation Section 1.415(c)-2, or successor regula-
tion, is specified by a retirement system, compensation shall be
defined as wages within the meaning of 26 U.S.C. 3401(a) and all
other payments of compensation to an employee by an employer
for which the employer is required to furnish the employee a written
statement under 26 U.S.C. 6041(d), 6051(a)(3) and 6052 and shall be
determined without regard to any rules under 26 U.S.C. 3401(a)
that limit the remuneration included in wages based on the nature
or location of the employment or the services performed (such as
the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).
(4) However, for limitation years beginning on and after Janu-
ary 1, 1998, compensation shall include amounts that would
otherwise be included in compensation but for an election under 26
U.S.C. 125(a), 402(c)(3), 402(h)(1)(B), 402(k), or 457(b). For
limitation years beginning on and after January 1, 2001, compensation
shall also include any elective amounts that are not includable in
the gross income of the employee by reason of 26 U.S.C.
132(c)(5).
(5) For limitation years beginning on and after January 1, 2009,
compensation for the limitation year shall also include compensa-
tion paid by the later of two and one-half (2-1/2) months after an
employee's severance from employment or the end of the limitation
year that includes the date of the employee's severance from em-
ployment:
(a) The payment is;
1. The payment is;
2. Regular compensation for services during the employee's
regular working hours;
3. Compensation for services outside the employee's regular
working hours, such as overtime or shift differential;
4. Commissions, bonuses or other similar payments; and
5. Absent a severance from employment, the payments would
have been paid to the employee while the employee continued to
be employed in employment with unusual and prolonged absence
for reasons other than the employee's own will or other
leave that the employee would have been able to use if
employment had continued.
(b) Back pay, within the meaning of Treasury Regulation Sec-
tion 1.415(c)-2(1)(ii), shall be treated as compensation for the
limitation year to which the back pay relates to the extent that the back pay
represents wages and compensation that would otherwise be includ-
ed under this definition.

Section 7. Service Purchases under Section 415(n). (1) Effective
for permisson service credit contributions made in limitation
years beginning after December 31, 1997, if a member makes one
(1) or more contributions to purchase permisson service credit
under a retirement system, then the requirements of 26 U.S.C.
415(n) shall be treated as met only if:
(a) The requirements of 26 U.S.C. 415(b) are met, determined
by treating the accrued benefit derived from all these contributions
as an annual benefit for purposes of the 415(b) limit; or
(b) The requirements of 26 U.S.C. 415(c) are met, determined
by treating all these contributions as annual additions for purposes
of the 415(c) limit.
(2) For purposes of applying this section, a retirement system
shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C)
solely by reason of this section and shall not fail to meet the per-
centage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of
this section.

- 1820 -
(3)(a) For purposes of this section, the term "permissive service credit" means service credit:

1. Recognized by a retirement system for purposes of calculating a member's benefit under a retirement system;
2. Which the member has not received under a retirement system and
3. Which the member may receive only by making a voluntary additional contribution, in an amount determined under a retirement system, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and notwithstanding paragraph (a)(2) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a retirement system.

(4) The retirement systems shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this paragraph; or
(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under a retirement system.

(5) For purposes of subsection (4) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" shall mean permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(b)(3));
(b) Service as an employee (other than as an employee described in clause (a) of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or
(d) Military service other than qualified military service under 26 U.S.C. 414(u) recognized by the retirement system.

(6) In the case of service described in subsection (5)(a), (b), or (c), the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for periods in excess of the service under any plan of the same type.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 26 U.S.C. 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (4) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

(b) The distribution rules applicable under federal law to a retirement system shall apply to these amounts and any benefits attributable to these amounts.

(8) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be paid to an amount less than the amount which was allowed to be purchased under the terms of the retirement system as in effect on August 5, 1997. For purposes of this subsection, an eligible member shall be an individual who first became a member in the retirement system before January 1, 1988.

Section 8. Modification of Contributions for 415(c) and 415(n) Purposes. The retirement system may modify a request by a member to make a contribution for a retirement plan, if the amount of the contribution would exceed the limits provided in 26 U.S.C. 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to section (1) of this subsection shall not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), the retirement system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 9. Repayment of Cashouts. Any repayment of contributions (including interest thereon) to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (e) limits.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 9:00 a.m., at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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 March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the commission.

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 840-6508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact: Robert B. Barnes
(1) Provides a brief summary of:
(a) What this administrative regulation does: This administrative regulation clearly identifies a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to a set forth compliance with the Code regarding testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Teachers' Retirement to maintain its tax qualified status as a public defined benefit plan under 26 U.S.C. 401(a).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clearly identifying a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(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 provide definitions for "limitation year" and limitations on benefits as established by 26 U.S.C. 415, clarifies those benefits to which certain adjustments and limitations are not applicable, delineates the historical information and numeric factors to be utilized to accurately calculate benefits for members, depending upon whether the requirements of the federal code do or do not apply to the particular benefit.
(b) The necessity of the amendment to this administrative regulation:
regulation: To ensure that Kentucky Teachers’ Retirement maintains its tax qualified status as a public defined benefit plan under 26 U.S.C. 401(a).

(c) How the amendment conforms to the content of the authorizing statutes: The amendments ensure compliance with federal law, including pertinent Treasury Regulations, regarding the computation of member benefits.

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide detailed, concise instructions for calculation of benefits for members who comply with state law, the federal code and federal tax laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who become eligible to withdraw their contributions and decide to rollover or transfer their contributions.

(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: If members seek to rollover or transfer their eligible rollover contributions, the members will be required to rollover or transfer their eligible rollover contributions to eligible retirement plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust 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: There is no increase in fee or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.

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

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

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

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:
   26 U.S.C. secs. 401(a)(31), 402(c), 406(d)(3)
2. State compliance standards: None
3. Minimum or uniform standards contained in the federal mandate: The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).
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, is necessary to prevent any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the increase in compensation limit as provided by the Internal Revenue Code, 26 U.S.C. 401(a)(17)(A).

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System (Amendment)

102 KAR 1:240. Increase in compensation limit.

RELATES TO, 26 U.S.C. 401(a)(17)
STATUTORY AUTHORITY, KRS 161.310, 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers’ Retirement System of the state of Kentucky to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the Board of Trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the increase in compensation limit as provided by the Internal Revenue Code, 26 U.S.C. 401(a)(17)(A).

Section 1. Definition. Annual compensation is defined in KRS 161.220(10).

Section 2. Increase in Limit. The annual compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed $200,000. For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided in Section 3 of this administrative regulation. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account, in determining a plan member’s contributions or benefits for the current plan year, the compensation for the prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

Section 3. Cost-of-living Adjustment. The $200,000 limit on annual compensation in Section 2 of this administrative regulation shall be adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year.
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Section 4. In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit in Section 2 of this administrative regulation shall be:

(1) $150,000 for any determination period beginning in 1996 or earlier for members who became participants on or after July 1, 1996.

(2) $160,000 for any determination period beginning in 1997, 1998, or 1999 for members who became participants on or after July 1, 1996.

(3) $170,000 for any determination period beginning in 2000 or 2001 for members who became participants on or after July 1, 1996.

(4) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(q)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendant of the employee who has not attained age nineteen (19) before the close of the year.

Section 5. The annual compensation on which contributions are reported shall not exceed the maximum annual compensation limit as specified in Sections 2 through 4 of this administrative regulation. The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all annual compensation up to the maximum annual limit. Once an employee's annual compensation has reached the maximum annual limit, the employer shall continue to report the employee's contributions but shall not report any additional contributions on the employee's annual compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on February 23, 2009, at 9 a.m. at the Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made at the hearing. If not heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert B. Barnes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the increase in compensation limit as provided by the Internal Revenue Code, 26 U.S.C. 401(a)(17)(A).
(b) The necessity of this administrative regulation: This administrative regulation is necessary to define eligible increases in compensation limit as provided by the Internal Revenue Code, 26 U.S.C. 401(a)(17)(A) for purposes of compliance with federal tax laws.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Teachers' Retirement to maintain its tax qualified status as public defined benefit plan under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by defining compensation limits for purposes of compliance with federal tax law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment defines compensation limits for purposes of compliance with federal tax law.
(b) The necessity of the amendment to this administrative regulation: This amendment defines compensation limits for purposes of compliance with federal tax law.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines compensation limits for purposes of compliance with federal tax law.
(d) How the amendment will assist in the effective administration of the statutes: This amendment defines compensation limits for purposes of compliance with federal tax law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All participating members of Kentucky Teachers’ Retirement 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: Members will be subject to the contribution limits imposed by federal law under Code section 401(a)(17).
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this regulation.
(b) On a continuing basis: There is no continuing cost.
(c) In total, what are the sources of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from trust and 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: There is no increase in fees or funding.

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

(8) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. secs. 401(a)(17)
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amendment)


STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of income taxes by the Department of Revenue.

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2008[2007] Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS 141.0401 for tax years beginning in 2008[2007].
(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky to apportion and allocate net income to Kentucky in accordance with KRS 141.120 or 141.206.

(3) Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass through entity or general partnership, corporation and pass-through entities taxable in Kentucky, and taxable in another state)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky that is also a partner or member of a corporation, limited liability partnership, limited liability entity that is taxable both within and without Kentucky, and taxable in another state.

(4) Revenue Form 41A720BIO, "Schedule B, Bio, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", shall be used by a taxpayer who is a biodiesel producer, biodiesel blender, or renewable diesel producer to report the biodiesel gallons produced or used by the blender and request approval from the Kentucky Department of Revenue of the claiming a biodiesel tax credit amount allowed by KRS 141.423.

(5) Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", shall be used by a corporation to compute the tax credit allowed by KRS 141.041 for coal used or substituted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(6) Revenue Form 41A720CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", shall be used by a taxpayer to request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.420 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(7) Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Incentive Tax Credit for Coal Conversion Plant (40% Tax Credit)", shall be used by a corporation or pass-through entity to compute the tax credit allowed by KRS 141.041 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(8) Revenue Form 41A720CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(9) Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a C corporation filing a consolidated return to show its federal pro forma consolidated return.

(10)[8] Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", shall be used by a C corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

[10][9] Revenue Form 41A720E, "Form 720-EST, 2008 EST, 2009 EST", Kentucky Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher, shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(11) Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", shall be used by a taxpayer who is a producer of ethanol to report ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.422.

(12)[10] Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit", shall be used by a qualified taxpayer to determine the tax credit allowed by KRS 141.442.

(13)[11] Revenue Form 41A720HH, "Form 720-EST, 2008 EST, 2009 EST", Kentucky Housing for Homeless Families Deduction, shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.


(15)[13] Revenue Form 41A720KCR, "Schedule KCR, Ken-
lucky Consolidated Return Schedule", shall be used by a C corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

(17)[144] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", shall be used by a corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(18)[146] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(19)[146] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass-through entity to include in the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006)", shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or a corporation or limited liability pass-through entity that is a member or partner in another limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET[doing business both within and without this state].

(20)[147] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Entities that are partners, members, shareholders, or shareholders in another limited liability pass-through entity with an economic development project that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006)", shall be used by a limited liability pass-through entity with an economic development project that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its gross receipts and gross profits from all sources to be entered on Revenue Form 41A720LLET(K) [entities that are partners, members, or shareholders in another limited liability pass-through entity with an economic development project that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or a limited liability pass-through entity with an economic development project that is a member or partner in another limited liability pass-through entity doing business both within and without this state].

(21)[148] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a C corporation with a current year not operating loss or net operating loss carry-forward.

(22)[149] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky KNOT Carry Forward Schedule", shall be used by a corporation filing an electronic or nexus[ata] consolidated income tax return as provided by KRS 141.200 in addition to Revenue Form 41A720NOL[under the provisions of KRS 141.200(1) on Revenue Form 41A720 in all situations to show the Kentucky net operating loss (KNOT) carry forward balance for each member of the affiliated group.

(23) Revenue Form 41A720Q-O, "Schedule O-Q, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions and subtractions from federal taxable income on Revenue Form 41A720 Part II, Lines 9 and 15, respectively.

(24) Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.395.

(25) Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", shall be used by a taxpayer to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit claimed on their (income) tax return.

(26) Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC-P, Part I Continuation", shall be used by a corporation or an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(27)[244] Revenue Form 41A720RC(I), "Instructions for Schedule RC", shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval of a tax credit for recycling and/or composting equipment, or a major recycling project.

(28) Revenue Form 41A720RC-R, "Schedule RC-R, Kentucky Disposition of Recycling or Composting Equipment Schedule", shall be used by a taxpayer disposing of recycling or composting equipment before the end of the receipt period to compute the tax credit recaptured to be reported on the applicable tax return.

(29) Revenue Form 41A720S, "Form 720S", 2009[2007] "Kentucky S Corporation Income Tax and LLET Return", shall be used by a corporation to determine the amount of [corporation-income] tax due in accordance with KRS 141.040 and 141.0401 and to report the shareholders’ share of income, loss, credits, deductions, etc., for tax years beginning in 2009[2007].


(31) Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Projects", shall be used by S Corporations with economic development projects to determine the shareholders’ shares of income, credit, deductions, etc., excluding the economic development projects.

(32) Revenue Form 41A720S(K-1), "Schedule K-1 (Form 720S(K)), 2009[2007] Shareholder’s Share of Income, Credits, Deductions, Etc.", shall be used by an S corporation to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

(33) Revenue Form 41A720S-Q, "Schedule Q-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a corporation filing Revenue Form 41A720S. Revenue Form 41A765 or Revenue Form 41A765-GP to show other additions and subtractions from federal ordinary income on Revenue Form 41A720S, 41A765 or 4A765-GP Part I, Lines 5 and 9, respectively.

(34) Instructions shall be included on the back of the form to assist the shareholder in preparing their Kentucky individual income tax return.

(35) Revenue Form 41A720SL, "Application for Six-Month Extension of Time to File Kentucky Corporation or Limited Liability Pass-Through Entity Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a corporation return or an income and LLET return.

(36) Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits claimed and shall be attached to the tax return.

(37) Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit (Brownfield)", shall be used by an entity claiming a tax credit provided by KRS 141.418.

(38) Revenue Form 41A720S-1, "Form 720S, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.
Revenue Form 41A720-S2 [41A720AM], "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005, and before January 1, 2007, as previously filed.

Revenue Form 41A720-S3 [41A720AM], "Form 720-AMENDED, Amended Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2005, as previously filed.

Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated return which has a Kentucky tax return for periods beginning on or after January 1, 2005, as previously filed.

Revenue Form 41A720-S5, "Form 720-X, Amended Kentucky Corporation Income and Corporation-Limited Liability Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and Corporation-Limited Liability Tax Return for tax periods beginning on or after January 1, 2005, as previously filed.

Revenue Form 41A720-S6, "Underpayment of Estimated Income Tax By Corporations", shall be used by a corporation to document that it meets the exception to the estimated income tax underpayment penalty. It is if the penalty year tax liability was equal to or less than $25,000 and estimated taxes equal or exceed the prior year tax liability. The penalty is charged on KRS 141.042 and KRS 141.990, or to compute its underpayment penalty.

Revenue Form 41A720-S7, "Instructions for Filing Corporation Income/Limited Liability Entitly Estimated Tax-Voucher", shall include instructions used by a corporation or a limited liability pass-through entity to determine the amount of estimated corporation income tax or limited liability entity tax that is required to be paid in accordance with KRS 141.990, or to compute its underpayment penalty.

Revenue Form 41A720-S8, "Form 8003-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of Corporation)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.347.

Revenue Form 41A720-S17, "Schedule KREDAT, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDAT) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

Revenue Form 41A720-S18, "Schedule KREDAT-SP, Tax Credit Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.347.

Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of Corporation)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.400.

Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Credit Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against [th] the Kentucky income tax liability and the limited liability entity tax liability in accordance with KRS 141.400.

Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of Corporations)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.403.

Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a company which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Credit Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against [th] the Kentucky income tax liability and the limited liability entity tax liability in accordance with KRS 141.403.

Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of Corporations)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.407.

Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", shall be used by a company which has a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and tax credits for the duration of the project.

Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Credit Computation Schedule (For a KJDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against [th] the Kentucky income tax liability and the limited liability entity tax liability in accordance with KRS 141.407.

Revenue Form 41A720-S30, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of Corporations)", shall be used by a corporation which has entered into a Kentucky Reinvestment Act (KRA) project to determine the allowable KRA credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.415.

Revenue Form 41A720-S32, "Schedule KRA-T, Tracking Schedule for a KRA Project", shall be used by a company which has entered into a Kentucky Reinvestment Act (KRA) project to maintain a record of the balance of approved costs and tax credits for the duration of the agreement.

Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of Corporations)", shall be used by a corporation which has entered into a Kentucky Economic Opportunity Zone (KEOZ) project to determine the allowable KEOZ credit allowed [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.401.

Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Credit Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", shall be used by any pass-through entity which has entered into a Kentucky Economic Opportunity Zone (KEOZ) project to determine the credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.401.

Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by any company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement.

Revenue Form 41A720-S43, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of Corporations)", shall be used by a corporation which has entered into a Kentucky Enterprise Support Act (KESA) project to determine the credit allowed against [th] the Kentucky corporation income tax liability and the limited liability entity tax liability in accordance with KRS 141.407.
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Section 2. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes" shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2003/2007 Application for Extension of Time to File Individual, General Partnership and Limited Liability Company Income Tax Returns for Kentucky", shall be submitted to the Department of Revenue by individuals, partnerships, and limited liability companies prior to the date prescribed by law for filing a return to request a six (6) month extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A200 [(PTE-WH)], "Form PTE-WH, "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report income allocable to each nonresident individual or corporate partner doing business in Kentucky only through its ownership interest in the pass-through entity.

(5) Revenue Form 40A201 [(740NP-WH)], "Form 740NP-WH, "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual and corporate partners.

(6) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(7) Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms for withholding and reporting Kentucky income tax withholding.

(8) Revenue Form 42A003(T), "2005/2006 Withholding Table Computer Form", shall be used by an employer for computing employees Kentucky income tax withholding each pay period.

(9) Revenue Form 42A740, "Form 740, 2006/2007 Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in 2006/2007, and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(10) Revenue Form 42A740-A, "Schedule A, Form 740, 2006/2007 Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for 2006/2007.


(12) Revenue Form 42A740-EZ, "Form 740-EZ, 2006/2007 Kentucky Individual Income Tax Return for Single Persons With No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in 2007, and shall be due within three and one-half (3 1/2) months after the close of the taxable year.
after the close of the taxable year.


(14) Revenue Form 42A740-4, "Schedules J, K, L, M, N, O, P", shall be completed and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(15) Revenue Form 42A740-KNOL, "Schedule KNOL, 2008[2009] Kentucky Net Operating Loss Schedule", shall be completed by individuals to compute and forward a net operating loss to subsequent years.


(17) Revenue Form 42A740-NP, "Form 740-NP, 2008[2009] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in 2008[2009], and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.


(22) Revenue Form 42A740-NP(R), "2008[2009] Kentucky Income Tax Return, Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2008[2009].


(24) Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.

(25) Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.

(26) Revenue Form 42A740-UTC, "Schedule UTC, Form 740, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.


(28) Revenue Form 42A740-XP, "Form 740-XP, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(29) Revenue Form 42A740-S1, "Form 2210-K, 2008[2009]

Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in 2008[2009].

(30) Revenue Form 42A740-54, "2009[2009] Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for 2009[2009].


(32) Revenue Form 42A740-21, "Form 8453-K, 2008[2009] Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(33) Revenue Form 42A740-22, "Form 740-V, 2008[2009] Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(34) Revenue Form 42A740-24, "Form 8853-K, 2008[2009] Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on their individual Kentucky income tax return.

(35) Revenue Form 42A741, "Form 741, 2008[2009] Kentucky Fiduciary Income Tax Return", shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.


(38) Revenue Form 42A741-K, "Schedule K, Form 741, 2008[2009] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

(39) Revenue Form 42A755-SP, "Form 755-SP, 2008[2009] Kentucky General Partnership Income Return", shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2008[2009].

(40) Revenue Form 42A755-SP, "Instructions, 2008[2009] Kentucky General Partnership Income Return", shall be provided to assist the general partnership in completing a general partnership income return.

(41) Revenue Form 765-SP(K-1), "Kentucky Schedule K-1, 2005-2009 Partner's Share of Income, Credits, Deductions, etc.", shall be filed by the general partnership with Form 765-SP to report each general partner's share of income, deductions, and credits.

(42) Revenue Form 765-SP(R), "2007-2009 Kentucky General Partnership Income Return Forms and Instructions", shall provide in a single packet Form 765-SP, 2007 Kentucky General Partnership Income Return, other forms customarily used by general partnerships in conjunction with Form 765-SP and instructions for filing these forms. The packet shall also contain a brochure entitled "Your Rights as a Kentucky Taxpayer."

(43) Revenue Form 765-SP(K), "Form 765-SP(K), 2008[2009] Kentucky Schedule K for General Partnerships with Economic Development Projects", shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.
(43) Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and taxes withheld for the filing period.

(44) Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", shall be used by employers to correct returns for filing period for the filing period.

(45) Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.


(47) Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(48) Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", shall be used by employers to amend wages and taxes reported for the filing period and the annual reconciled wages and taxes reported.

(49) Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(50) Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", shall be used by an employee to inform the employer of the number of exemptions claimed in order to determine the amount of Kentucky tax to withhold from wages each pay period.

(51) Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(52) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employees to inform employers of special tax exempt status.

(53) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(54) Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(55) Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue's Revenue Return Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(56) Revenue Form 42A809, "Certificate of Nonresidency", shall be used by employees to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(57) Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency status.

(58) Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(59) Revenue Form 42A812, "KIDDA Annual Report", shall be completed by employers to report KIDDA employee wage assessment fee information to the Department of Revenue.

(60) Revenue Form 42A813, "KJDA Annual Report", shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(61) Revenue Form 42A814, "KIRA Annual Report", shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(62) Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(63) Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(64) Revenue Form 42D003, "2008-2007 Kentucky Wage and Tax Statements (W-2K-2) Order Form", shall be used by employers to order wage and tax statements.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Corporation income taxes - referenced material:


2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass through entities taxable both within and without Kentucky)", October, 2008.

3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For a corporation or pass through entity/Corporations and pass through entities) taxable both within and without Kentucky that is also a partner or member of a limited liability pass through entity or general partnership in Kentucky and taxable in another state)", October, 2008.


6. Revenue Form 41A7230-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive (Tax Credit)".

7. Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol".


19. Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet (For a corporation or limited liability pass through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass through entity or general partnership organized or formed as a general partnership after January 1, 2006)", October 2008.

20. Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass through Entity with Economic Development Project(s))", October, 2008.

21. Revenue Form 41A720LLET(L), "Schedule LLET(L), Limited Liability Entity Tax - Continuation Sheet (For a limited liability pass through entity with economic development project(s) subject to the limited liability entity tax that is a partner or member of a limited liability pass through entity or general partnership organized as a general partnership after January 1, 2006)".

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42. Revenue Form 765-GP(K), "Kentucky General Partnership Income Return Forms and Instructions", October 2007.
57. Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax Return Form", 2006[2007].
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TUCKY Individual Income Tax”, April, 1988;
59[60] Revenue Form 42A812, "KIDA Annual Report", December, 2007;
60[61] Revenue Form 42A813, "KJDA Annual Report", December, 2007;
62[63] Revenue Form 42A815, "Withholding Tax Refund Application", August, 2006;
63[64] Revenue Form 42A816, "KEOZ Annual Report", December, 2007;
and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner
APPROVED BY LRC: January 14, 2009
FILED WITH LRC: January 15, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amended administrative regulation shall be held on February 23, 2009 at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in hearing held at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed 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 through March 2, 2009. 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 noted below.

CONTACT PERSON: Devon Hankins, Finance and Administration Cabinet, Room 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-7305, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Devon Hankins
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the forms to be used when reporting or estimating corporation tax, reporting or estimating limited liability entity tax, reporting or estimating individual tax, or withholding individual income tax for tax years beginning in 2008.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide taxpayers necessary tax forms for reporting and paying their corporation, limited liability entity, individual, and withholding taxes for tax years beginning in 2008.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating forms by reference.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes forms to be used by taxpayers to report and pay corporation taxes, limited liability entity taxes, individual income taxes, and withholding taxes to the Commonwealth of Kentucky pursuant to KRS Chapter 141. (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 tax forms to be used for tax years beginning in 2008.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms to the current tax laws in effect for years beginning in 2008.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay income taxes, limited liability entity taxes, and individual withholding taxes for tax years beginning in 2008.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individual, pass-through entity, and corporate tax filers are 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: Individual, pass-through entity, and corporate tax filers will use the forms contained in this administrative regulation to report, pay, and withhold taxes due pursuant to KRS Chapter 141 for tax years beginning in 2008.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) The cost of filing tax returns contained in this administrative regulation with the Commonwealth of Kentucky should be comparable to filing tax returns with surrounding states.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The forms contained in this administrative regulation should simplify and expedite the reporting and paying of taxes required by KRS Chapter 141.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The cost of printing and designing the forms.
(b) On a continuing basis: Forms are updated each year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the Department of Revenue.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required to implement this administrative regulation.
(8) What is the effect of this administrative regulation on any state or local government (including cities, counties, fire departments, or school districts)? Yes
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 131.130(3).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not increase revenues or expenses for the Commonwealth, but will expedite the collection of taxes.
provided by KRS Chapter 141.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(AMENDMENT)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.402
STATUTORY AUTHORITY: KRS 315.191(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(j) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation provides reasonable fees for this agency to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, interim certificates and the issuance and renewal of licenses and permits:

(1) Application for a licensee for pharmacist examination - $150.

(2) Application and initial license for a pharmacist license by license transfer - $250.

(3) Certifying the grades of a licensee of Kentucky to the licensing agency of another state - ten (10) dollars.

(4) Annual renewal of a pharmacist license - seventy (70) dollars.

(5) Delinquent renewal penalty for a pharmacist license - seventy (70) dollars.

(6) Annual renewal of an inactive pharmacist license - ten (10) dollars.

(7) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars.

(8) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars.

(9) Application for a permit to operate a pharmacy - $100.

(10) Renewal of a permit to operate a pharmacy - $100.

(11) Delinquent renewal penalty for a permit to operate a pharmacy - seventy-five (75) dollars.

(12) Change of location or change of ownership of a pharmacy (drug wholesaler or manufacturer permit - seventy-five (75) dollars.

(13) Application for a permit to operate as a [drug wholesaler or manufacturer - $100.

(14) Renewal of a permit to operate as a [drug wholesaler or manufacturer - $100.

(15) Delinquent renewal penalty for a permit to operate as a [drug wholesaler or manufacturer - $100.

(16) Change of location or change of ownership of a wholesale distributor license - seventy-five (75) dollars.

(17) Application for a license to operate as a wholesale distributor - $100.

(18) Renewal of a license to operate as a wholesale distributor - $100.

(19) Delinquent renewal penalty for a license to operate as a wholesale distributor - $100.

W. MICHAEL LEAKE, President
APPROVED BY AGENCY: December 17, 2008
FILED WITH LRC: January 9, 2009 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday February 23, 2009 at 9 a.m. at the board's office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Monday February 16, 2009, five workdays prior to this 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 will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burfeson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2820, fax (859) 246-2823.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burfeson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation changes the requirement for a wholesaler permit to a wholesale distributor be licensed.

(b) The necessity of this administrative regulation: The regulation is necessary to comply with KRS 315.191(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation is in conformity with the authorizing statute that requires the board to issue a license to a wholesale distributor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation will change the requirement for a wholesale distributor to have a license instead of a wholesaler permit.

(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 will change the requirement for a wholesaler permit to wholesale distributor license.

(b) The necessity of the amendment to this administrative regulation: This regulation amendment will allow the Board to issue a license to a wholesale distributor instead of a permit to a wholesaler.

(c) How the amendment conforms to the content of the authorizing statute: This amendment will allow the board to issue a wholesale distributor a license instead of issuing a wholesaler a permit.

(d) How the amendment will assist in the effective administration of the statute: This amendment will state the procedure for issuing a wholesale distributor license to operate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately nine hundred (900) wholesale distributors will be issued a license instead of a wholesaler being issued a permit.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. Wholesale distributors will now be issued a license instead of a wholesaler permit.

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

(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 establish a fee for a wholesale distributor license instead of a wholesaler permit. The fee remains the same.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

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

GENERAL GOVERNMENT CABINET
State Board Of Examiners and Registration of Landscape Architects 
(Amendment)

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.070, 323A.100(1). (4)
STATUTORY AUTHORITY: KRS 323A.060, [323A.070.] 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

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

(1) Renewal fees:
(a) Active license: $170.
(b) Inactive license: $150.
(c) Twenty-five (25) dollars for non-refundable registration fee.

(2) Duplicate certificate: $250.

(3) Issuance of original license certificate: $200.

(4) Restoration of a suspended license: renewal fee established in subsection (1) of this section, plus an amount calculated pursuant to KRS 323A.100(1).

(5) Reassessment fee: $170.

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

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

(b) Examination sections:
1. Section C: $250
2. Section D: $250 (section A—seventy-five (75)-dollars; 2-section-B—$140-dollars; 3. Section E—$265;
4. Section-D—$140;
5. Section E—$265.)

BILLY F. VANPELT, President
APPROVED BY AGENCY: December 26, 2006
FILED WITH LRC: December 31, 2008

PUBLIC HEARING AND WRITTEN COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 27, 2009 at 9 a.m. at the Board's office, Spindletop Administration Building, Suite 106, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by five working days prior to this hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4 p.m. on March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jane Gardner, Executive Director, Board of Examiners and Registration of Landscape Architects, Spindletop Administration Building, Suite 106, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2753, fax (859) 246-2754.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: person: Jane Gardner
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets fees.
(b) The necessity of this administrative regulation: This regulation is necessary to apprise interested individuals of the fees charged by the board.
(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation is in conformity with KRS 323A.060, that requires the Board to promulgate administrative regulations to establish fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists interested individuals of the fees charged by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This regulation establishes a fee for reactivation and increases fees for inactive licenses, duplicate certificates, and sections C and E of the registration examination.
(b) The necessity of the amendment to this administrative regulation: Costs for inactive registrants, Reactivations and Examinations have increased, and the Board is currently subsidizing these costs with other revenue sources.
(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the Board to establish fees.
(d) How the amendment will assist in the effective administration of the statutes: The increased fees will pay for the costs of the
administration of these services.

(3) List the type and number of individuals, businesses, organizations, or state or local governments affected by this administrative regulation: The board anticipates this regulation will affect approximately 65 individuals, while affecting no businesses, organizations, state or local governments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 individuals affected will pay a higher fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The increased fees are outlined in the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals affected will continue to be served in an efficient manner by the Board and staff.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? As this regulation establishes fees, no additional funding is required for implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment increases the fees paid by licensees.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact examining and landscape architects licensed by the Kentucky Board of Examiners and Registration of Landscape Architects

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.060 authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect the expenditures of the agency, but could increase the revenues by $5,000 annually.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? $5,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $5,000.

(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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Barbering
(Amendment)

201 KAR 14:051. Supervision of apprentice licensees.

RELATES TO: KRS 317.450(1)(a)(ii)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation precisely defines the responsibilities of the shop owner, manager, and apprentice with respect to the supervision requirement for apprentice barbers.

Section 1. Any person employed as an apprentice barber shall, at all times, work under the immediate and continuous supervision of a licensed barber.

Section 2. (1) A list, including dates and signatures of the licensed barber who will be supervising the apprentice, shall be submitted to the board office within ten (10) days of the first day an apprentice begins work at a shop.

(2) The owner or manager of a shop shall be responsible to add or delete from the list of barbers as personal changes occur in the shop, within ten (10) days of the change.

Section 3. The owner and manager of a shop in which an apprentice is employed shall be responsible for ensuring that the requirements of this administrative regulation are fully met with respect to that shop.

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).

KAREN B. GREENWELL, Administrator
APPROVED BY AGENCY: January 14, 2009
FILED WITH LRC: January 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2009, at 10 a.m. Eastern Time at the office of the Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 2009, five (5) business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: Karen Greenwell, Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Phone (502) 429-7145, fax (502) 429-7149.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell, Administrator

(1) Provides a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the requirements for the supervision of apprentices licensees.

(b) The necessity of this administrative regulation: This administrative regulation relates to KRS 317.450(1)(a)(ii) and is necessary to establish the responsibilities of the shop owner, manager and
apprentices with respect to the supervision requirement for apprentice barbers who shall at all times work under the immediate and continuous supervision of a licensed barber, that a list of the licensed barbers who will be supervising apprentice barbers shall be submitted to the board office within ten working days of the first day an apprentice begins work in a shop and that the owner or manager of the shop shall be responsible to add to or delete from the list as personnel changes occur in the shop within ten days of a change.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 317.440(1)(c) by establishing specific requirements in the supervision over the administration of the provisions of this chapter relating to protecting the health and safety of the public and to protect the public against misrepresentation, deceit or fraud in the training and supervision of barber apprentices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KAR 317.450(1)(a)3 and KRS 317.440(1)(c) by providing the board with a list of the licensed barbers who supervise an apprentice and establishing that the owner or manager shall be responsible to add to or delete from the list of barbers as personnel changes occur in the shop and will assist the board in protecting the public against any misrepresentation, deceit or fraud with regard to the apprentices or barbers.

(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 specifies requirements for a list of licensed barbers who supervise apprentices.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the board with a list of licensed barbers who supervise apprentices and to assist the board in protecting the public.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to have complete supervision over the administration of the provision of this chapter relating to the training and supervision of barber apprentices.

(d) How the amendment will assist in the effective administration of the statutes: By defining the specific requirements for a list of licensed barbers who supervise apprentices and the updating of the list.

(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 apprentice barber shops and the barber shop owners, managers and barbers who supervise apprentices. Approximately 120 new apprentices are licensed a year.

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

(a) list the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Barber shop owners and managers where an apprentice barber practices will be responsible to submit and update as personnel changes occur, a list of the licensed barbers who supervise the apprentice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will assist the board in commending barber shop owners, managers and licensed barbers for their efforts and dedication in supervising apprentice barbers and protecting the public against misrepresentation, deceit, or fraud in the training and supervision of apprentices.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by 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 fee.

(9) TIERING: Is tiering applied?Tiering was not applied because all individuals affected by the regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Barber schools licensed by the Kentucky Board of Barbering.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.430 and KRS 317.440(1)(b)

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

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

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

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

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

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

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(Amendment)

201 KAR 19:035. Qualifications for examination and licensure.

RELATES TO. KRS 323.050(2), (3), 323.060, 323.120(1)(a)(i)
STATUTORY AUTHORITY. KRS 233.210(1)(b).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.050(2) allows the board to prescribe the experience requirements for licensure. KRS 323.210(1)(b) and (2) require the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

Section 1. Eligibility to Take the State Board Examination. A person who possesses the qualifications prescribed in KRS 323.050, and this administrative regulation, shall be eligible to take
the examination.

Section 2. General Requirements. (1)(a) The board shall verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of his moral character.

(b) An applicant shall not be considered to be of good moral character if he has:
1. Committed an act specified in KRS 323.120(1)(a) through (i);
2. Chronic alcoholism, persistent drug abuse, or an act of behavior that would, if the applicant were licensed, jeopardize or impair his judgment to meet professional responsibility as an architect to the public welfare and safety; or
3. Violated a provision of KRS Chapter 323 or a board administrative regulation either before or after admission to the examination.

(c) If an applicant has violated the registration laws of another jurisdiction, the board shall determine whether the violation adversely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to the board college transcripts and verification from employers and architects that he has:
(a) Met the requirements of KRS 323.050 and 323.060 and this administrative regulation; and
(b) Had well diversified and satisfactory training in architectural practice as evidenced by completion of the first year of the Intern Development Program specified in Section 4 of this administrative regulation.

(3) The documentation required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

Section 3. Education Requirements. (1) An applicant who has met the requirements of Section 2 of this administrative regulation shall [in addition—
(a) hold a degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board not later than two (2) years after termination of enrollment; or
(b) have satisfied the education standard specified in the National Council of Architectural Registration Boards—pamphlet "NCARB Education Standards", by earning five (5) years of equivalent education credits as determined by the experience and education definitions of Table A and its footnotes.

(2) The minimum five (5) years of equivalent education credits shall be accumulated prior to June 1, 1982.

Section 4. Training Requirements for Licensure. (1) An applicant who has passed the examination shall have satisfied the Intern Development Program training requirements as provided by Chapter 1, Section 3 of the National Council of Architectural Registration Boards "Handbook for Interns and Architects" prior to final application for licensure.

(2) The documentation required by subsection (1) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, Spindletop Administration Building, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4 p.m.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008

FILED WITH LRC: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 27, 2009, at 2 p.m., Eastern Time in the Board Conference Room, 2624 Research Park Drive, Suite 101, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 20, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to attend the public hearing or written comments or the proposed administrative regulation to:
CONTACT PERSON. Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: James J. Graue
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the educational, experience, and examination criteria for licensure as an architect.
(b) The necessity of this administrative regulation: KRS 323.210 requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.210 authorizes the board to establish by administrative regulation the criteria for education, experience, and examination for those persons seeking licensure as an architect.
(d) How the administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of determining the qualification of applicants by identifying the criteria for eligibility to take the examination and for licensure.
(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 to this administrative regulation removes the equivalency standards for meeting the educational requirements.
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is that the equivalency standard is no longer acceptable and all applicants must obtain a professional degree in architecture from an accredited program.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 323.050(1) authorizes the board to set equivalency standards. The board has determined that the national equivalency standards on which this requirement was based are no longer recognized.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation specifies the education necessary to take the examination.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board has approximately 20 applicants for the examination per year.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The impact will be minimal as the equivalency standard since the experience had to be accumulated prior to June of 1992, and applicants no longer utilize that process.
(5) Estimate of how much it will cost to implement this adminis-
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Regulatory regulation:
(a) Initially: There are no costs associated with this amendment to the administrative regulation.
(b) On a continuing basis: There are no continuing costs associated with this amendment to the administrative regulation.
(c) Costs for implementing and enforcing this amendment will be funded by license fee paid by licensees.
(d) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by license fee paid by licensees.
(e) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.
(f) This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(g) TIERING: Is tiering applied? No. This administrative regulation sets out the education standard that must be met by all applicants for examination.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(Amendment)

201 KAR 19:040. Examinations required; general provisions.

RELATES TO: KRS 323.050(4)-(4)(4), 323.215
STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

Section 1. Examination Definition; Administration. (1) Each applicant for licensure shall successfully complete the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB).
(2) The board shall designate each testing service consultant who shall administer the examination in accordance with the agreement between the consultant and NCARB.
(3) The examination sites and schedules shall be as designated by the testing service and agreed to by NCARB.

Section 2. Conditions of Examination. (1) Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.
(2) The board shall adopt the scoring procedures recommended by NCARB.
(3) Information pertaining to the subject matter of the examination shall not be given to an applicant in advance, except as specifically authorized by the board.
(4) The board may approve transfer credits for each part of the examination passed prior to the 1983 ARE. Information as to transfer credits shall be provided, if appropriate, to an applicant who requests an application form.

Section 3. (1) An applicant who has passed all divisions of the ARE by January 1, 2006, regardless of the time taken, has passed the examination.
(2) An applicant who has passed one or more but not all divisions of the ARE by January 1, 2006, shall have five (5) years to pass all remaining divisions.
(a) A passing grade for any remaining division shall be valid for five (5) years, after which time the division shall be retaken if the remaining divisions have not been passed.
(b) The five (5) year-period shall commence after January 1, 2006, on the date when the passed division is administered.
(c) Divisions passed before January 1, 2006 shall not have to be repeated.
(3) An applicant who has not passed any division of the ARE by January 1, 2006 shall be governed by the five (5) year requirement, which shall commence on the date when the first passed division is administered.

Section 4. Applicant Notice. Each applicant who has applied and been deemed eligible to take the examination shall be notified of the examination site and the procedures to make the appointment with the testing service center to take the examination divisions of his choosing. Special instructions and limitations shall be issued to each applicant.

Section 5. Transfer of Scores. (1) The board, upon proper application, may accept passing scores achieved on divisions of the ARE administered and attested to by another NCARB member board under the terms of Section 3 of this administrative regulation.
(2) The board, upon proper application and payment of the applicable fee, may forward the grades achieved by an applicant in the various divisions of the examination given under the board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating the applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer. The transfer shall terminate the applicant's application pending before the board.

Section 6. Conditions of Examination. (1) Upon allegation of misbehavior on the part of an applicant in connection with taking the examination, the board shall investigate the allegation and take appropriate action including suspending or revoking test taking privileges and the cancellation of test scores.
(a) Misbehavior shall include, without limitation:
(b) Falsifying examination on the examination application;
(c) Cheating on the examination;
(d) A violation of examination guidelines or;
(e) A violation of a confidentiality agreement with respect to the examination.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 27, 2009, at 2 p.m., Eastern Time in the Board Conference Room, 2624 Research Park Drive, Suite 101, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 20, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Flex Cecil, 2624 Research Park Drive, Suite 121, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2611.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: James J. Gravie
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that applicants are informed of the examination process required for licensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation informs candidates for examination of the examination requirements.

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

(a) How the amendment will change the existing administrative regulation: This amendment specifies conduct that is not permissible related to the examination and the requirement to maintain examination confidentiality.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to ensure that applicants are informed of the examination process required for licensure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation ensures that candidates are informed of conduct that is impermissible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board has approximately 20 candidates taking the examination per year.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Applicants will be informed of impermissible conduct related to the examination process.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initial: The costs associated with the implementation of this administrative regulation involve the potential enforcement of the prohibitions against the candidates.

(b) On a continuing basis: The costs are incurred only when the board receives credible information that a candidate has been involved in misconduct in the examination process.

(c) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(d) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate that an increase in fees will be necessary to implement this administrative regulation.

(e) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation sets out prohibitions that must be observed by all examination candidates.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(Amendment)

201 KAR 19:070. Duplicate certificates.

RELATES TO: KRS 323.100, 323.210(2), (5), (7)
STATUTORY AUTHORITY: KRS 323.210(2), (5), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.100 specifies the form of the license issued by the board. This administrative regulation provides the [to-provide] basis for issuing [to-issue] duplicate certificates.

Section 1. Request and Conditions. An architect who is registered in the Commonwealth of Kentucky may secure a duplicate certificate by showing a legitimate need for such certificate and accompanying this request with the prescribed fee established by the board (of twenty-five ($25) dollars).

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 27, 2009, at 2 p.m., Eastern Time in the Board Conference Room, 2624 Research Park Drive, Suite 101, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 20, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to attend the public hearing or written comments to the proposed administrative regulation to:

CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the process for obtaining a duplicate certificate.

(b) The necessity of this administrative regulation: KRS Chapter 323 provides the basis for issuing a duplicate certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.210 authorizes the board to promulgate regulations necessary to effectuate the administration of the laws.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative sets out process for obtaining a duplicate certificate.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation sets forth the process for obtaining a duplicate certificate.

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 323 provides the basis for issuing a duplicate certificate.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 323.210 authorizes the board to promulgate regulations necessary to effectuate the administration of the laws.

(d) How the amendment will assist in the effective administration of the statutes: This administrative sets out process for obtaining a duplicate certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board issues approximately duplicate certificates each year.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Licensees will be required to show a legitimate need for obtaining a duplicate certificate.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation involve the potential enforcement of the prohibitions against the candidates.

(b) On a continuing basis: The costs are incurred only when the board receives credible information that a candidate has been involved in misconduct in the examination process.

(c) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(d) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate that an increase in fees will be necessary to implement this administrative regulation.

(e) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(f) TIERING: Is tiering applied? No. This administrative regulation sets out prohibitions that must be observed by all examination candidates.
enforcing this amendment will be funded by the person obtaining a duplicate certificate.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees will be necessary to implement this administrative regulation are included in this amendment.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation sets out a uniform procedure required of any person requesting a duplicate certificate.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects (Amendment)

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110
STATUTORY AUTHORITY: KRS 323.080, 323.210(1)(b), (2), (3)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.080, 323.210(1)(b), (2), (3)(b) require required the board to promulgate administrative regulations establishing fees for services. This administrative regulation establishes the deadline for paying the renewal fee and a fee schedule.

Section 1. License Renewal. (1) The renewal fee shall be due and paid before the first day of the year designated as the licensee's renewal period. Except as provided in subsection (3) of this section, a licensee failing to pay the renewal fee on or before the 30th day of August, of that designated year, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his license shall be automatically revoked.

(2) Except as provided in paragraph (b) of this subsection, a license shall be renewed, restored, or reinstated by July 1 of each calendar year.

(b) A license issued between January 1 and June 30 of a calendar year shall not be renewed until the following July 1.

(3)(a) During a period of active military duty, an architect in the service may, upon written application to the board, be excused from paying the renewal fee until his military service is terminated and he wishes to resume practice.

(b) An identification card or renewal certificate shall be issued upon notification of his return from duty and payment of the current renewal fee.

(4)(a) An architect whose license has been revoked for failure to pay the renewal fee, who wishes to have his license reinstated, shall make a written request giving the reason why he neither surrendered his registration nor paid the fee within the time prescribed by law.

(b) Upon payment of the prescribed fees and acceptance by the board, his license shall be reinstated.

(c) The application for license renewal shall include a signed affidavit that the licensee has not been in violation of the professional practice standards stated in 201 KAR 19.095.

(b) Failure to sign the affidavit shall be cause for the renewal application to be rejected.

Section 2. Fee Schedule. (1) Application for admission to the Architect Registration Examination - $100.

(2) Reapplication for admission to the Architect Registration Examination after original application has expired - $100.

(3) For a certificate after passing of examination - twenty-five (25) dollars.

(4) Application for restoration of a voluntarily surrendered license - $150.

(5) Application for a license by reciprocity with another state or country - $200.

(6) Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus - $150.

(7)(a) Annual renewal fee for a license renewal submitted and received before July 1: $125 [annually].

(b) Annual renewal fee for a license renewal submitted and received on or after July 1 and before August 1: $150.

(c) Annual renewal fee for a license renewal submitted and received on or after August 1 and before August 30: $175.

(d) Annual renewal fee for an emeritus architect fifty (50) dollars.

(8) Certifying the active license of a registrant to the licensing agency of another jurisdiction: twenty-five (25) dollars.

(9) Administrative fee of twenty-five (25) dollars for failure to notify the board of change of an address, telephone number, email address or employment within thirty (30) days of the change.

(10) Administrative fee of twenty-five (25) dollars for duplicate documents, including renewal forms, wallet cards, or will certificates.

(12)(8)(a) A fee shall not be refunded.

(b) Each payment shall be by check made payable to "Kentucky State Treasurer."

(c) Each check shall be certified except those for the renewal fee.

Section 3. Charges for Examination. (1) An applicant shall register with and pay the cost of taking the examination directly to the designated testing service.

(2) The charges shall be made each time the examinations are taken and shall not be refunded.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 27, 2009, at 2 p.m., Eastern Time in the Board Conference Room, 2624 Research Park Drive, Suite 101, Lexington, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by February 20, 2009, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grappe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the fees required for licensure and renewal of licensure.

(b) The necessity of this administrative regulation: KRS Chapter 323 provides that a licensed architect shall pay fees that are established by administrative regulation within the limits created by the statutes. This administrative regulation establishes those fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.110 provides that applicants and licensees shall pay the prescribed fees, within the limits set out in the KRS 323.080, as determined by the board.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration 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 the existing administrative
regulation: This amendment specifies the fee for the renewal of a license.

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 323.080(1) requires the board to set the fee for license renewal.

(c) How the amendment conforms to the content of the authorizing statute: KRS 323.020(1) authorizes the board to set the renewal fees up to $250. The fee for renewal of set out in this amendment is within that limitation.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation specifies the fee necessary to administer the operations of the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 2300 architects.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Licensees will be required to pay the renewal fee in order to renew their license.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation involve the employment of board administrator, the mailing costs for the renewal applications, and other costs.

(b) On a continuing basis: The costs are incurred yearly with each renewal cycle.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The fees or funding necessary to implement this administrative regulation are included in this amendment.

(8) This administrative regulation establishes fees.

(9) Tiering: Is tiering applied? No. This administrative regulation sets out a uniform renewal fee for the renewal of the architect license.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(Amendment)


RELATES TO: KRS 323.110(1), 323.120(1)(g), 323.210(3)

STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY: FUNCTION... AND CONFORMITY: KRS 323.210(3) authorizes the board to establish continuing education requirements. This administrative regulation establishes continuing education requirements for board licensees.

Section 1. Definitions. (1) "Elective topic" means an additional topic of interest to the registrant that is related to the practice of architecture.

(2) "Professional development unit" or "PDU" means a:

(a) Unit equal to fifty (50) minutes clock time for the taking of an examination; or

(b) Customary time of completion prescribed by an examination vendor, if the board finds the time to be reasonable.

(3) "Relevant topic" means an area which is particularly focused on the health, safety, and welfare of the public.

(4) "Self-directed activity" means:

(a) An unstructured self-study visit to an architecturally significant site;

(b) A professional service to the public which draws on the registrant's expertise as an architect; or

(c) A business practice course related to new technology, offered by a person qualified by education or experience.

(5) "Structured activity" means a:

(a) College or university sponsored course;

(b) Seminar;

(c) Tutorial;

(d) Short course;

(e) Professional or technical organization sponsored:

1. Program;

2. Course;

3. Self-study course; or

4. Monograph.

Section 2. Purpose. The purpose of this continuing education program is to ensure that all registered architects remain informed on technical and professional subjects which the board deems appropriate to safeguard life, health, property and welfare of the public.

Section 3. Scope and Exemptions. (1) To annually renew his license, an architect registered in Kentucky shall comply with this administrative regulation unless he is exempted by one (1) of the following reasons:

(a) He is exempted as a first time registrant by:

1. Examination; or

2. Reciprocally;

(b) He has applied for or is reviewing an architect emeritus [stature建筑师] who:

1. Is at least sixty-five (65) years old;

2. Has requested emeritus status at the beginning of the license renewal period; and

3. Has retired from practice in all jurisdictions and is not maintaining an active practice in any jurisdiction;

(c) He is a civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period;

(d) He is a registrant of another National Council of Architectural Registration Board's jurisdiction that has a required continuing education program, if:

1. It accepts Kentucky requirements to satisfy its continuing education requirements; and

2. The registrant certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction.

(2) A hardship case may be considered by the board.

Section 4. Requirements. (1) A registered Kentucky architect shall:

(a) Obtain a total of twelve (12) PDUs per year; and

(b) Report these credits as a condition for registration renewal.

(2) The continuing education requirement of subsection (1) of this section shall be satisfied during the period beginning July 1 and ending June 30 of the following year.

(3) A minimum of eight (8) PDUs shall consist of structured activities, addressing the following relevant topics:

(a) Codes, statutes, and administrative regulations governing the practice of architecture;

(b) Environmental issues;

(c) Code of ethics;

(d) State registration law;

(e) Design proficiency;

(f) New technology, including construction:

1. Material;

2. Methods;

3. Systems; or

4. Concepts;

(g) Interface, other than normal day-to-day contact, with other design disciplines, including:

1. Engineer;

2. Consultant;

3. Specialist; or

4. Contractor;

(h) Legal aspects, including:

1. Contract documents;

2. Insurance;

3. Bonds; and

4. Project administration;

(i) Specialization in:

1. Presentation;

2. Adaptive reuse; or
3. A building type; and
   (i) Study or consultation opportunity.
   (k) A passing score on the LEED Accredited Professional Exam-
       ination shall qualify for eight (8) PDUs under this require-
       ment.
   (4) A maximum of four (4) PDUs may consist of self-directed
       activities, addressing the following elective topics:
       (a) Business or practice efficiency;
       (b) Business development;
       (c) Personal skills;
       (d) New skills; or
       (e) General education.

Section 5. Reporting and Recordkeeping. (1) The following
shall be submitted for renewal of a license.
   (a) A Continuing Education Annual Report Form listing the
       completed courses;
   (b) A renewal application; and
   (c) The renewal fee.
   (2) An incomplete submission shall be returned to the reg-
       istrant.
   (3) A random sample of annual reports shall be reviewed to
       ensure accuracy and compliance.
   (4) The registrant shall:
       (a) Be responsible for retaining proof of participation in con-
           tinuing education activities;
       (b) Retain a record for continuing education for a period of two
           years from the date of submission of the annual report to the
           board; and
       (c) Furnish copies or continuing education records on the re-
           quest of the board for audit purposes.
   (5) Proof of participation in continuing education activities shall
       include:
       (a) A log showing the:
           1. Activity claimed;
           2. Sponsoring organization;
           3. Location; and
           4. Duration;
       (b) An attendance certificate;
       (c) A signed attendance receipt;
       (d) A paid receipt;
       (e) A list of attendees signed by a person in charge of the ac-
           tivity; and
       (f) Similar documentation.
   (6) Disallowance. If continuing education credit is disallow-
       ed, the registrant shall have thirty (30) calendar days after noti-
       fication to:
       (a) Substantiate the original claim; or
       (b) Earn other continuing education credit to meet the minimum
           requirements.

Section 6. Noncompliance and Sanctions. Failure to fulfill the
continuing education requirements or file the required annual re-
port, properly completed and signed, shall result in nonrenewal of
the architect’s certificate of registration.

Section 7. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
       Kentucky [State] Board of [Examiners and Registration of] Architects; and
   (b) "License Renewal Application Form", (2008/5/3) Edition),
       Kentucky [State] Board of [Examiners and Registration of] Archi-
       tects.
   (2) This material may be inspected, copied, or obtained, sub-
       ject to applicable copyright law, at Kentucky Board of Architects,
       Spindletop Administration Building. 2624 Research Park Drive,
       Suite 101, Lexington, Kentucky 40511, Monday through Friday, 8
       a.m. to 4 p.m.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2003
FILED WITH LRC: January 15, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on
February 27, 2009, at 2 p.m., Eastern Time in the Board Con-
ference Room, 2624 Research Park Drive, Suite 101, Lexington,
Kentucky. Individuals interested in attending this hearing shall
notify the agency in writing by February 20, 2009, five workdays
prior to the hearing, of their intent to attend. If no notification of
intent to attend the hearing is received by that date, the hearing
may be canceled. This hearing is open to the public. Any person
who attends will be given an opportunity to comment on the pro-
posed administrative regulation. A transcript of the public hearing
will not be made unless a written request for a transcript is made. If
you do not wish to attend the public hearing, you may submit writ-
ten comments on the proposed administrative regulation. Written
comments shall be accepted until March 2, 2009. Send written
notification of intent to attend the public hearing or written com-
ments on the proposed administrative regulation to:

CONTACT PERSON: Rex Cecil, 2624 Research Park Drive,
Suite 131, Lexington, Kentucky 40511, phone (859) 246-2069, fax
(859) 246-2431.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Gravo

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administra-
       tive regulation sets forth the continuing education requirements for
       the renewal of licensure.
   (b) The necessity of this administrative regulation: KRS 323
       Chapter 323 provides that a licensed shall meet the continuing educa-
       tion requirements established by the board for license renewal.
       This administrative regulation establishes the continuing education
       requirements.
   (c) How this administrative regulation conforms to the content
       of the authorizing statutes: KRS 323 210(3) authorizes the board to
       establish continuing education requirements.
   (d) How this administrative regulation will assist in the effective
       administration of the statutes: This administrative sets out the con-
       tinuing education requirements for renewal.
   (2) If this is an amendment to an existing administrative regula-
       tion, provide a brief summary of:
       (a) How the amendment will change the existing administrative
           regulation: This amendment specifies requirements for emerging
           architects, specifies that a LEED AP course is acceptable by the
           board, and sets out the time for complying with the continuing edu-
           cation requirements.
       (b) The necessity of the amendment to this administrative regu-
           lation: KRS Chapter 323 provides that a licensed shall meet the
           continuing education requirements established by the board for
           license renewal. This administrative regulation establishes the contin-
           uing education requirements.
       (c) How the amendment conforms to the content of the author-
           izing statutes: KRS 323.080(2) authorizes the board to set the
           renewal fees up to $150. The fee for renewal of set out in this
           amendment is within that limitation.
       (d) How the amendment will assist in the effective administra-
           tion of the statutes: KRS 223.010(5) authorizes the board to estab-
           lish continuing education requirements
       (3) List the type and number of individuals, businesses, organi-
           zations, or state and local governments affected by this administra-
           tive regulation: The board has approximately 2300 architects who
           are required to meet continuing education for renewal of licensure.
       (4) Assessment of how the above groups will be impacted by the
           implementation of this administrative regulation: Licensees will
           be required to meet the continuing education specifications set out
           in this administrative regulation.
       (5) Estimate of how much it will cost to implement this adminis-
           trative regulation:
           (a) Initially: The costs associated with the implementation of
               this administrative regulation involve the administration of the con-
               tinuing education program by board administrator, and other costs.
           (b) On a continuing basis: The costs are incurred yearly with
               each renewal cycle.
           (6) The source of funding for the implementation and enforce-
               ment of this administrative regulation: Costs for implementing and
enforcing this amendment will be funded by the renewal and licence fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation are included in this amendment.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation states that Ementus Architects are not required to obtain continuing education.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)


RELATES TO: KRS 314.470
STATUTORY AUTHORITY: KRS 314.131
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.470 adopted the Nurse Licensure Compact. The compact requires the adoption of this administrative regulation.

Section 1. Definitions. (1) "Board" means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Information system" means the coordinated licensure information system.

(3) "Primary state of residence" means the state of a person's declared permanent home.

(4) "Public" means any individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc.

Section 2. Issuance of a License By a Compact Party State. (1) Effective June 1, 2007, an applicant for initial licensure shall not be issued a compact license granting a multistate privilege to practice, unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(2) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. That evidence shall include a declaration signed by the nurse. The applicant shall also furnish one (1) of the following:

(a) Driver's license with a home address;
(b) Voter registration card displaying a home address; [or]
(c) Federal income tax return declaring the home address of residence.

(3) Military form no 2058 - state of legal residence certificate of

(4) W2 from the US government or any bureau, division or agency thereof indicating the declared state of residence.

(5) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license shall be issued by the party state.

(6) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(7) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(8) A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days.

(9) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty (30) day period in subsection (3) of this section shall be stayed until resolution of the pending investigation.

(10) The former home state license shall no longer be valid upon the issuance of a new home state license.

(11) If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state may take action in accordance with that state's laws and rules.

Section 3. Limitations on Multistate Licensure Privilege - Disciplinary. (1) Home state boards shall include in all licensure disciplinary orders or agreements that limit practice or require monitoring the requirement that the licensee subject to said order or agreement shall agree to limit the licensee's practice to the home state during the pendency of the disciplinary order or agreement.

(2) This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and any other party state boards.

(3) An individual who had a license which was suspended, revoked, or denied an application for cause in a prior state of residence may not be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state of residence. Once eligible for licensure in the prior state, a multistate license may be issued.

Section 4. Information System. (1) Levels of access. The state public shall have access to nurse licensure information limited to:

1. The nurse's name;
2. Jurisdiction or jurisdictions of licensure;
3. License expiration date or dates;
4. Licensure classifications and statuses held;
5. Public emergency and final disciplinary actions, as defined by contributing state authority; and
6. The status of multistate licensure privileges.

(2) Nonparty state boards shall have access to all information system data except current significant investigative information and other information as limited by contributing party state authority.

(3) Party state boards shall have access to all information system data contributed by the party states and other information as limited by contributing nonparty state authority.

(4) The licensee may request in writing to the home state board to review the data relating to the licensee in the information system. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates that claim. The board shall verify and within ten (10) business days correct inaccurate data to the information system.

(5) The board shall report to the information system within ten (10) business days:

(a) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring, except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority;
(b) Dismissal of complaint; and
(c) Changes in status of disciplinary action or licensure encumbrance.

(6) Current significant investigative information shall be deleted from the information system within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

(7) Changes to licensure information in the information system shall be completed within ten (10) business days upon notification by a board.

JIMMY ISENBERG, President
APPROVED BY AGENCY: December 12, 2006
FILED WITH LRC: December 16, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 10 a.m. (EST) in the office of the Kentucky
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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 February 16, 2009, 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 March 2, 2009. 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 implements the Nurse Licensure Compact.
(b) The necessity of this administrative regulation: KRS 314.470, Article V(d) and VIII(c) require the adoption of uniform rules to implement the Compact.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By the adoption of uniform rules.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By the adoption of uniform rules.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It makes several changes: it adds the use of other evidence to prove residency status; it requires a single state license to be so marked; and it clarifies when a nurse who has been disciplined can obtain a multistate license.
(b) The necessity of the amendment to this administrative regulation: The Compact Administrators group has adopted these changes.
(c) How the amendment conforms to the content of the authorizing statutes: By the adoption of the changes authorized by the Compact Administrators group.
(d) How the amendment will assist in the effective administration of the statutes: By the adoption of the changes authorized by the Compact Administrators group.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All FNPs and LPNs, approximately 65,000.

(4) Provide a brief analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: No action is necessary by licensees. They will have to comply with the changes, if affected.
(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.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: AGENCY FUNDS.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(9) TIERING: Is tiering applied? Tiering 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 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:

ENERGY AND ENVIRONMENT CABINET
Department for environmental protection
Division of Water
(Amendment)

401 KAR 8:040, Laboratory certification.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141 Subpart C, Appendix A, 141.28, 141.201-211, Appendix AB, EQ 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100(2)(b), 224.10-110(2), 42 U.S.C. 3001-3011(28)(Chapter 6A Subchapter XII), 40 C.F.R. 141.28

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224.10-110(2) authorizes the [Environmental and Public Protection] cabinet to enforce the [statute 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 15, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes procedures for certification of commercial or water system laboratories to test for various analysis categories or constituents within an analysis category (contaminant groups or constituents within a contaminant group).
Section 1. Laboratory Certification. (1) The U.S. Environmental Protection Agency or the body shall evaluate [weekly] public water system[system/s] or a commercial laboratory that performs analysis laboratories-performing analyses] for a public water system for certification[system/s].

(2) Contracting with the laboratory with third party to conduct laboratory evaluations [evaluate laboratories] and make recommendations to the cabinet regarding certification shall be in accordance with the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual].

(a) Each certification may be for one (1) or more analysis category [contaminant group] or for a single contaminant within an analysis category [contaminant group].

(b) Each analysis category [contaminant group] shall require a different certification, but qualification for different certifications may be evaluated as[separate] during one (1) inspection.

Section 2. Application. (1) An initial certification request may be made at any point during the calendar year.

(2) A laboratory seeking laboratories that apply for certification shall submit a written request for the certification to the cabinet. The request shall include:

(a) A statement of the analysis categories [contaminant group] for which certification is requested; and

(b) A list of the methods for each analyst for which certification is requested; and

(c) Application fee is established [specified] in 401 KAR 8.050, Section 2 for the contaminant group[s] for the [which] certification is requested.

(3) [The] Cabinet shall request information necessary to determine eligibility [suitability] for certification as described in the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual].

(4) An applicant may request recertification in accordance with 401 KAR 8.050, Section 2.

Section 3. [Standards. Laboratories shall be certified in accordance with the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual].

and this administrative regulation.

Section 4. Performance Evaluations. Performance evaluations shall be performed for laboratories certified for those laboratories seeking certification to conduct chemical or bacteriological analyses.

Section 5. The cabinet shall certify all public water system laboratories or commercial laboratories performing analyses for public water systems. All analyses required by 401 KAR 8.010 through 8.700 shall be performed in a certified laboratory and shall be in accordance with 40 C.F.R. Part 141 Subpart C, March 19, 2007. Certification shall be performed on an annual basis with fees payable as set forth in 401 KAR 8.050.

Section 6. [Public Water System Laboratory [Laboratories]]. (1) A public water system [system/systems] may establish a laboratory [their own laboratorie[s] for the laboratory. Each laboratory [those laboratories] shall be [properly certified annually] and maintain annual certification.

(2) Failure to achieve or maintain certification shall not relieve the public water system of the responsibility to report results of the required analyses from a certified laboratory.

Section 7. [Requirements. Maintenance of certification shall require the following:]

(1) Analysis. Analyses shall be performed [by the laboratory] for a certified laboratory shall perform an analysis for a contaminant group [or constituent] in accordance with the approved method found in [440] 40 C.F.R. Subpart C, including Appendix A, effective June 3, 2008, and 141.24(a), October 20, 2006.

(2) Submission of analyses. Submission of [analyses] results. Except as provided in subsection (5) of this section, the result of analysis shall be certified in a certified laboratory [laboratories] by staff and for a public water system [system/systems] shall be submitted to the cabinet on the tenth day of the month following the [specified] testing period for which the analysis was performed [samples were taken] and shall be submitted to the public water system as soon as possible. The public water system shall be responsible for this reporting requirement.

(3) Performance evaluation sample. A performance evaluation sample [samples] shall be analyzed and the results shall be submitted to the cabinet at times specified in the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual] not to exceed twice a year, unless additional results shall be required [as needed] in accordance with the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual].

(4) Deviations. (a) Any deviation from accepted practice specified in the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual] listed on a report resulting from an on-site inspection, shall be corrected.

(b) A written explanation of the deviation and actions taken to correct it shall be submitted to the cabinet within thirty (30) days of the issuance of the inspection report.

(5) Violations. (a) [The] laboratory shall report any violation of a maximum contaminant level [level/levels] or other violation requiring [of] tier one public notification pursuant to 401 KAR 8.070 to the public water system and the cabinet within twenty-four (24) hours of sample analysis, in accordance with 40 C.F.R. 141.2411, Appendix B, effective July 1, 2007.

(b) [The] Laboratory shall begin checking compliance within twenty-four (24) hours of notification of the violation.

(6) Emergency provision. Laboratories shall make provisions to receive and test samples within twenty-four (24) hours a day during an emergency [emergencies].

Section 8. [Right of Entry. (1) The certified laboratory is] shall permit the cabinet to conduct off-site surveys during normal business hours, without prior notification.

Section 9. [Revocation of certification and downgrading of certification shall be in accordance with the procedures established in the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual].

(1) A laboratory that has been not[certified/laboratories which have been notified of] a change of certification shall, within seventy-two (72) hours, notify the public water system [the systems] that has notified the laboratory of the change in certification status and any impact that change could have on the public water system.

(2) A laboratory [laboratories which have been notified of] may provide monitoring reports by contracting with a certified laboratory that shall comply with the [Manual for the Certification of Laboratories Analyzing Drinking Water; Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual].

Section 10. [Recognition of an Out-of-state Laboratory. (1) The cabinet may recognize a laboratory located outside of Kentucky that is certified by the Environmental Protection Agency certification, or [by] a state having primary enforcement responsibility for the provisions of the Safe Drinking Water Act, 42 U.S.C. 300f through 300i-2 (at-se], or that has been certified by one laboratory or is certif[ied] pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f through 300i-2.]
Water Act, 42 U.S.C. 300f through 300t-26 (et seq.), requirements.

(2) A water system located in Kentucky that has entered into a contract with a certified out-of-state laboratory shall comply with all reporting time intervals and capabilities established in the Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures Quality Assurance and Kentucky Drinking Water Laboratory Certification Program Manual.

(3) If on-site inspection shall be conducted for certification of an out-of-state laboratory, the laboratory shall bear the cost.

Section 8.4.4 Incorporation by Reference. (1) The following material is incorporated by reference:


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 200 Fair Oaks Lane (44-230), Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 7, 2009
FILED WITH LHC: January 9, 2009 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301B and 301C, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, 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 this public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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 procedures for the certification of laboratories performing analysis for public and semipublic water systems.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure that Kentucky has an adequate number of certified laboratories to conduct analysis for public water systems.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 authorizes the cabinet to enforce regulations for the purification of drinking water for public and semipublic use. 40 C.F.R. 142.10(3) requires states to have a program for laboratory certification in order to obtain primary enforcement responsibility for the Safe Drinking Water Act.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the cabinet to certify laboratories to carry out necessary analysis of drinking water.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended in order to adopt the latest analytical techniques approved by the U.S. Environmental Protection Agency and to adopt a new certification manual developed for Kentucky laboratories.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will allow certified laboratories to use the most recently approved analytical techniques. The laboratory certification manual is a supplement to the federal manual to reflect unique needs in Kentucky.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-110 authorizes the cabinet to enforce regulations for the purification of drinking water for public and semipublic use. 40 C.F.R. 142.10(3) requires states to have a program for laboratory certification in order to obtain primary enforcement responsibility for the Safe Drinking Water Act. The amendments to this administrative regulation allow certified laboratories to use the latest approved analytical techniques, and allow the cabinet to tailor its certification procedures to unique circumstances in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: The ability to use the latest approved analytical techniques will allow a public water system and its laboratory to tailor monitoring to achieve the most cost effective means of compliance with monitoring requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 43 certified microbiology laboratories and 23 certified chemistry laboratories in Kentucky. Nineteen microbiology and four chemistry laboratories are municipally owned Outside Kentucky, there is one certified microbiology laboratory and fifty-two certified chemistry laboratories. These laboratories serve 491 public, 50 semipublic, and 7 bottled water systems in Kentucky.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment: The amendment to this regulation will give a certified laboratory increased flexibility in pursuing techniques or methods to monitor drinking water.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The amendments to this administrative regulation will not increase costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A certified laboratory will have a wider selection of methods for testing drinking water from which to choose. This could reduce costs to public water systems.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost is anticipated.
(b) On a continuing basis: No additional cost is anticipated.
(c) The source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation is funded by a combination of state general funds, fees, and federal funds provided to support the enforcement 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: This proposed amendment will not require an increase in laboratory certification fees or an increase in funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not directly or indirectly establish or increase fees.
(9) TIERING: Is tiering applied? Yes. A laboratory may be certified for a single analysis category, a group of analysis categories, or for all analysis categories that are monitored in drinking water.
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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to certified laboratories that do analysis for contaminants in public and semipublic water systems. Public water systems are often owned by city governments or organized under county governments. Other entities, such as associations, privately-owned or investor-owned entities, may 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 224.10-110 authorizes the cabinet to enforce regulations for the purification of drinking water for public and semipublic use. 40 C.F.R. 142.10(3) requires that the cabinet have a laboratory certification program as a condition to having primary enforcement responsibility for the Safe Drinking Water Act.

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 in subsequent years.
   (c) How much will it cost to administer this program for the first year? No additional costs are anticipated.
   (d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated.

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

Revenues (+): 
Expenditures (+):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 142.10(3)

2. State compliance standards. KRS 224.10-110 authorizes the Cabinet to enforce regulations for the purification of drinking water for public and semipublic use.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 142.10(3) requires states to have a laboratory certification program as a condition to receiving primary enforcement responsibility for the Safe Drinking Water Act.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? This regulation provides different requirements from the federal regulation, but they are not more stringent. The different requirements are specific to Kentucky. A state certification manual is being incorporated by reference. This manual clarifies and formalizes the state's administrative certification process. The manual establishes the Kentucky-specific requirements for those laboratories wishing to become certified. The federal regulation recommends an administrative process but does not dictate the state's specific requirements for obtaining certification.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation provides different requirements from the federal regulation, but they are not more stringent. The different requirements are specific to Kentucky. A state certification manual is being incorporated by reference. This manual clarifies and formalizes the state's administrative certification process. The manual establishes the Kentucky-specific requirements for those laboratories wishing to become certified. The federal regulation recommends an administrative process but does not dictate the state's specific requirements for obtaining certification.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:050. Drinking water program fees.


STATUTORY AUTHORITY. KRS [Chapter] 223.220, 224.10-100(20), 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224.10-130(20) authorized the cabinet to establish, by administrative regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224, 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. The purpose of this administrative regulation establishes fees to establish a fee structure for reviewing plans and specifications of public water systems, for operator certification, and for laboratory certification.

Section 1. [Fees.] Fees for the review of plans and specifications for new and existing public and semipublic water systems.

(a) Filing fees.
   (1) Except as provided in KRS 224.10-100, [any] person who submits the plans and specifications listed in subsection (2) of this section shall simultaneously submit a filing fee in the amount of twenty percent of the required project fee described in subsection (2) of this section.
   (2) A filing fee shall not be [not] refundable if the plans and specifications for which the filing fee is required[related] are denied or withdrawn.
   (3) The filing fee shall[will] be applied toward the project fee assessed in subsection (2) of this section.
   (4) Plans and specifications not approved shall[will] be returned to the applicant.

(b) [Fees] for the review and approval of the plans and specifications shall[will] be assessed according to the following schedule:

   1. Fee for reviewing plans of community public water systems.
      (a) The fee for reviewing plans for a water treatment plant utilizing disinfection and all components of conventional filtration treatment shall be $800[coagulation, disinfection, filtration, and sedimentation (all treatment components; complete treatment) - $800].
      (b) The fee for reviewing plans for a water treatment plant utilizing disinfection, but not all components of conventional filtration treatment, shall be $525[least disinfection and other treatment component(s); but less than complete treatment - $525].
      (c) The fee for reviewing plans for a water treatment plant utilizing only disinfection shall be $250.
      (d) The fee for reviewing plans for a change in design capacity of a water treatment plant involving disinfection and all components of conventional filtration treatment shall be $800[coagulation, disinfection, filtration, and sedimentation (all treatment components; complete treatment) - $800].
      (e) The fee for reviewing plans for a change in design capacity
of a water treatment plant involving disinfection, but not all components of conventional filtration treatment, shall be $525 (and other treatment components), but less than complete treatment – $525).

f. The fee for reviewing plans for a change in design capacity of a water treatment plant involving only disinfection shall be $125.

g. The fee for reviewing plans for a change, other than to a water treatment plant, in the structures and appurtenances, except for distribution lines of less than 10,000 feet, of a water supply system – $325.

h. The fee for reviewing plans for a water supply system for a change to the distribution lines of 10,000 feet or less shall be $150.

2. Fees for reviewing plans of noncommunity public water systems.

a. The fee for reviewing plans for a water treatment plant utilizing disinfectant and all components of conventional filtration treatment shall be $800 (coagulation, disinfection, filtration, and sedimentation (all treatment components), complete treatment) – $800.

b. The fee for reviewing plans for a water supply system serving more than 100 people that utilizes disinfection but not all components of conventional filtration treatment shall be $2000 (but not providing complete treatment) – $200.

c. The fee for reviewing plans for a change to a water supply system serving more than 100 people shall be $100.

d. The fee for reviewing plans for a water supply serving 100 people or fewer which utilizes disinfection but not all components of conventional filtration treatment shall be $100 (but not providing complete treatment) – $100.

e. The fee for reviewing plans for a change to a water supply system serving 100 people or fewer shall be $50 (fifty) dollars.

3. Semipublic water systems. The fee for reviewing plans for a semipublic water system facility or a change to a semipublic water system shall be fifty (50) dollars.

Section 2. Fees for Laboratory Certification [shall be paid on an annual basis]: (1) Fees shall be received by February 15 of each calendar year.

2. A fee received after February 15 and before March 14 shall incur a surcharge of fifteen (15) percent.

3. Laboratory Certification shall be revoked if fees are not received by March 15.

4. To reinstate a laboratory certification that was revoked pursuant to subsection (3) of this section, the laboratory shall comply with 401 KAR 8 040, Section 2, and shall pay a surcharge of twenty-five (25) percent of the certification fee established in Table A in subsection (5) of this section.

5. The annual fee for certification by analysis category shall be as established in Table A.

<table>
<thead>
<tr>
<th>Analysis Category</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microbiology Administration and Application</td>
<td>$1,000</td>
</tr>
<tr>
<td>Microbiology</td>
<td>$500</td>
</tr>
<tr>
<td>Chemistry Administration and Application</td>
<td>$1,000</td>
</tr>
<tr>
<td>Disinfection By-Products</td>
<td>$500</td>
</tr>
<tr>
<td>Synthetic Organic Chemicals</td>
<td>$500</td>
</tr>
<tr>
<td>Volatile Organic Chemicals</td>
<td>$500</td>
</tr>
<tr>
<td>All Other Chemical Analysis Categories</td>
<td>$500</td>
</tr>
</tbody>
</table>

6. Fees shall apply to in-state and out-of-state laboratories.

7. A laboratory may request a ten (10) percent discount of the following year's certification fee if it submits compliance data electronically for one (1) calendar year.

8. To be eligible for the discount:

1. The laboratory's data shall not contain errors;
2. The laboratory shall not err in the electronic-submittal process; and
3. The laboratory shall comply with 401 KAR 8 040, Section 4.

8. A laboratory certified by the National Environmental Laboratory Association Certification Institute (TN) or a National Environmental Laboratory Association Program accrediting authority may request a ten (10) percent discount of the total certification fee for which it maintains the TN certification. The three (3) contaminant groups for which certification is required and their respective fees are as follows:

- Bacteriological – $250
- Inorganic – $125
- Organic – $125

Section 3. (1) Fees for certification of water treatment plant and water distribution system operators.

(a) Certification application fee shall be $100.

(b) A renewal application fee shall be:

- Fifty ($50) dollars if renewed through the cabinet Web site; or
- $200 if not renewed through the cabinet Web site.

(c) A renewal late fee shall be $250.

(d) A reciprocity fee shall be $500.

(2) Each year the cabinet, in consultation with the board, shall establish fees for operator training conducted by the cabinet.

(3) The fees established in subsection (1) of this section shall be nonrefundable.

(b) Fifty (50) percent of the fees established in subsection (2) of this section shall be refundable if registration is canceled at least two (2) business days prior to the beginning of the training event.

(c) The fees in subsection (2) of this section shall be fully refundable if the training event is canceled by the cabinet. Fees for the certification of water plant operators shall be as follows:

- Certification fees: $100 (one hundred) dollars.
- Certification by reciprocity: $35 (thirty-five) dollars.
- Reexamination for a new certificate or to make up for failure to pass an examination: $35 (thirty-five) dollars for each reexamination.

(4) Reinstatement of a lapsed certificate: thirty-five (35) dollars plus renewal fee.

- Certificate renewal: thirty-five (35) dollars per biennium.
- Training: Fees for training courses conducted by the cabinet shall not exceed five (5) dollars per contact hour.

(5) Failing a course: accompanying applications shall not be re-submitted to those who fail to pass the examination.

Section 4. Severability. If any provision of this administrative regulation is held to be invalid by a court of competent jurisdiction, the remainder of this administrative regulation remains in effect.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 7, 2009
FILED WITH LRC: January 9, 2009 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on February 25, 2009, at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Rooms 301B and 301C, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 2009, 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 March 2, 2009. 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, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

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 fees for reviewing plans and specifications of public water systems, for operator certification, and for laboratory certification.

(b) The necessity of this administrative regulation: The fees set out in this administrative regulation are designed to recover a portion of the costs for implementing these programs.

(c) How this administrative regulation conforms to the content of the enabling statutes: KRS Chapter 224.10-100(20) authorizes the cabinet to establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. KRS 223.160-223.220 and 224.10-110 authorize the cabinet to implement a certification program for drinking water system operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to be effective, the laboratory certification and operator certification programs must be administered in a manner that meets the objective of the Safe Drinking Water Act and is acceptable to EPA. On-site laboratory audits are an integral part of the successful laboratory certification program, which has a real cost associated with the on-site audit.

(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 will increase fees for laboratory certification and water system operator certification to recover a higher percentage of the actual costs of those programs. The proposed amendment adds a surcharge for late payments. Additionally, penalties are added if payment is not received within 10 weeks of the due date.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are designed to allow the cabinet to recover more of the actual costs of the operator certification program and the laboratory certification program. Without raising the fees, laboratory on-site audits may not be completed in a timely manner or may not meet the requirements of EPA. This would affect the quality of the laboratory certification program and jeopardize primacy. Additionally, failure to fully implement the laboratory certification program can reduce the reliability of compliance data for public water systems and negatively impact public health.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(20) authorizes the cabinet to establish a schedule of fees for the cost of processing permit applications. KRS 223.220 allows for fees to be established to implement the certification program.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will allow the cabinet to recover more of the actual costs of the operator certification program and the laboratory certification program. The amendment will allow Kentucky to continue the laboratory certification program without sacrificing the quality of the program. The amendment, which increases fees and includes payment deadlines, surcharges, and penalties will allow for a more effective management of the program. The training and testing of operators helps to ensure high quality drinking water for customers of public water systems and protects public health. Trained, tested, and certified operators extend the life of a water system through proper operation and maintenance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified drinking water treatment plant and distribution system operators, as well as operators seeking certification, will be affected by this amended administrative regulation. There are approximately 2,500 operators currently certified by the program. State or local governments that operate drinking water treatment plants or distribution systems will be affected by this amended administrative regulation if they pay the certification fees of their employees. There are sixty-six laboratories certified in Kentucky and fifty-three certified laboratories outside the state. In Kentucky, forty-three laboratories are certified for microbiology and twenty-three are certified for chemistry (19 microbiology and 4 chemistry laboratories are municipally owned). Outside Kentucky, there is one certified microbiology laboratory and fifty-two certified chemistry laboratories. With these increased fees, Kentucky will be able to provide more efficient and consistent technical assistance to certified laboratories as well helping to defray the actual cost of the certification programs. This benefit extends to the general public by ensuring that drinking water analysis is done properly and is protective of public health.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators, certified laboratories, state and local governments, and operators seeking certification will refer to this amended administrative regulation to determine the necessary fees for obtaining and maintaining certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For laboratory certification, the proposed fee increases depend on the number of analysis groups for which the laboratory wishes to be certified. For example, to be certified for one analytic category, the increase would be from $250 per year to $1,500 per year. To be certified for two categories, the increase would be from $500 to $2,000, with an additional $500 per category. For operator certification, individuals will pay the following costs:

1. Certification fee - $100
2. Renewal application fee - $50 if renewed electronically; $100 if not renewed electronically
3. Renewal late fee - $250
4. Reciprocity fee - $500

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In order to conduct drinking water monitoring under the Safe Drinking Water Act, a laboratory must be certified. A public water system must be operated by a certified operator. This administrative regulation allows the cabinet to provide these services. A laboratory will receive a routine on-site audit, which will provide them with technical feedback and recommended corrective actions to improve or maintain the quality that is required for EPA's drinking water program. Certification by Kentucky for drinking water may be used by a laboratory to increase its business by obtaining in-state and out-of-state clients.

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

(a) Initially: The state is currently collecting a fee for operator and laboratory certifications. There is no additional cost to the state to implement this amendment other than mailing notification to all (currently 119) laboratories of the changes.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The annual laboratory certification fees will supplement general funds used to administer and enforce the program. Penalties will provide additional monies for costs associated with late payments. The program currently operates at a loss and these amended fees will allow the cabinet to recover many of the costs associated with certifying laboratories. The costs and projected revenue are described in the tables below:

- 1849 -
Projected Drinking Water Compliance and Technical Assistance Costs, CY 2009

| Personnel Certification Program Costs per Year (31 FTEs) | $219,465 |
| Contractual Certification Program Cost per Year          | $85,000  |
| Total Certification Program Cost per Year                | $304,465 |

Average Certification Program Cost per Hour $157

<table>
<thead>
<tr>
<th>Certification Type</th>
<th>Actual Certification Costs</th>
<th>Proposed Certification Fee</th>
<th>Average No. of Certifications per Year</th>
<th>Total Certification Costs</th>
<th>Total Certification Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Chemistry</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sub-Type:</td>
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</tr>
<tr>
<td>Application Fee</td>
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<td>IOC/SEC/RADS</td>
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<td>(2) Microbiology</td>
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<td>$500</td>
<td>43</td>
<td>$21,887</td>
<td>$21,500</td>
</tr>
</tbody>
</table>

$155,247 $152,500

Operator certification revenues in the following table are based on two fiscal years. Drinking water certifications expire on June 30 of even-numbered years. Therefore, the renewal year would yield higher revenues and the non-renewal year would yield lower revenues. The annual operator fees will be used to administer and enforce the program.

Average Operator Certification Program Cost For Two (2) Years $703,200

<table>
<thead>
<tr>
<th>Certification Fee</th>
<th>Proposed Fee</th>
<th>Anticipated # of Submissions</th>
<th>Anticipated Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>860</td>
<td>$86,000</td>
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<tr>
<td>On-line Renewal Fee</td>
<td>$50</td>
<td>2025</td>
<td>$101,250</td>
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<tr>
<td>Paper Renewal Fee</td>
<td>$100</td>
<td>475</td>
<td>$47,500</td>
</tr>
<tr>
<td>Late Renewal Fee</td>
<td>$250</td>
<td>250</td>
<td>$62,500</td>
</tr>
<tr>
<td>Limited Fee</td>
<td>$100</td>
<td>0</td>
<td>$0</td>
</tr>
<tr>
<td>Reciprocity Fee</td>
<td>$500</td>
<td>10</td>
<td>$5,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>$302,250</td>
</tr>
</tbody>
</table>

(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 amended administrative regulation establishes the fees associated with operator certification and laboratory certification. The fees are necessary to effectively implement the program and to continue to provide the certification program's existing services.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment establishes new fees and increases fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. Laboratory selection of discipline (chemistry or microbiology) and the number of categories will dictate the annual certification fee. A laboratory that analyzes more categories of contaminants will pay a higher annual certification fee. However, these laboratories will have the ability to increase their revenues throughout the year. Furthermore, this tiering would allow smaller labs, analyzing fewer categories, to pay lower annual certification fees, thus remaining competitive with their larger counterparts. For operator certification, a certification application fee is set at a flat rate of $100 for all applicants and is a one-time fee for each initial certification. Renewal fees are required every two years and are tiered based on the timeliness of the renewal application submitted. If the renewal application is received on or before the June 30 deadline, the fee is $50 if renewed electronically on the agency's Web site and $100 if not renewed electronically. If the renewal application is received after June 30 of the renewal year, a late fee will be assessed in the amount of $250. A certified operator from another state may apply for a Kentucky certification through reciprocity. The reciprocity application fee is $500. An individual can avoid the reciprocity application fee by qualifying for and passing the Kentucky certification exam.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What 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 certified operators and certified laboratories hired by public and semipublic water systems. A public water system sometimes has its own certified laboratory. A public water system often is owned by a city government or is organized under a county government. Other entities, such as associations, privately-owned or investor-owned entities, may have a water system. The cabinet will benefit from the additional revenue generated from this regulation change by providing more efficient and consistent technical assistance to certified laboratories as well as helping to address cost overruns within the program. The benefit also extends to the general public by ensuring that analyses are protective of public health.
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 and 224.10-110 authorize the cabinet
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

to establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224.

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

<table>
<thead>
<tr>
<th>Program</th>
<th>Current Program Costs</th>
<th>Current Revenue</th>
<th>Proposed Increase in Revenue</th>
<th>Total Expected Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lab Certification</td>
<td>$304,465</td>
<td>$18,750</td>
<td>$133,750</td>
<td>$152,500</td>
</tr>
<tr>
<td>Operator Certification*</td>
<td>$703,200</td>
<td>$166,500</td>
<td>$175,550</td>
<td>$342,050</td>
</tr>
</tbody>
</table>

*Operator Certification numbers are for 2-year cycles

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For the laboratory certification program, the state currently receives approximately $18,750 in fees per year. The estimated increase in revenue is $133,750, annually, for laboratory certification and $82,100 for operator certification.

(c) How much will it cost to administer this program for the first year? The cabinet currently collects a fee for the certification programs. There is no additional cost to increase the fees proposed by this administrative regulation. The cost to administer the laboratory certification program is approximately $304,465 per year. Other administrative duties are coordinated within the compliance and technical assistance branch. The cost to administer the operator certification program is approximately $351,000 per year. A local government that operates a drinking water treatment plant or distributes water systems, or is certified by the cabinet, will incur costs to administer the program. Public water systems are already required to have properly certified operators. These entities would incur an increase in expenses based upon the fee schedule listed below:

1. Certification fee: $100
2. Renewal application fee: $50 if renewed electronically; $100 if not renewed electronically
3. Renewal late fee: $250

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not introduce any additional costs. There is already a mechanism in place to collect fees.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for laboratory certification or operator certification fees, although 40 C.F.R. 142 does require those activities to occur as a condition of receiving primary enforcement responsibility for the Safe Drinking Water Act.
4. Will this administrative regulation impose stiffer requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for laboratory or operator certification fees, although the federal requirements allow fees to be charged by the state certification program.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS Chapter 224.10-100(20) authorizes the cabinet to establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. The cabinet uses fees to partially cover the cost of providing laboratory and operator certification programs for compliance with federal mandates. These certifications are necessary for laboratories and operators to do business.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Placement Services


RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645.

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.100(1), 200.115, 605.150, 635.095, 321.100(7), 640.120, 645.250.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.055(1), 15A.067, 15A.100, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", January 15, 2009(April 13, 2006), which includes the following:

200 Classification (Amended 1/15/09/04/14/06)
200 : Day Treatment Admissions (Amended 1/15/09/04/14/06)
202 Waiting List (Amended 1/15/09/04/14/06)
204 Daily Census and Population (Amended 1/15/09/04/14/06)
206 Administrative Transfers (Amended 1/15/09/04/14/06)
208 Youth Rights/Orientation (Amended 1/15/09/04/14/06)
209 Youth Access to Outside Investigative Agencies (Amended 1/15/09/04/14/06)
210 Interstate Referrals (Amended 1/15/09/04/14/06)
211 Interstate Runaways, Escapes and Absconders (Amended 1/15/09/04/14/06)
212 Interstate[Out-of-State] Purchase of Care (Amended 1/15/09/04/14/06)
213 Interstate Travel (Amended 1/15/09/04/14/06)
214 Interstate Revocations and Case Closure (Amended 1/15/09/04/14/06)
217 Advanced[Advance] Care Unit (Amended 1/15/09/04/14/06);
219: The "Classification and Placement[Assessment] Manual", 1/15/09/04/14/06;
219: The "Youth Level of Service/Case Management Inventory (YLS/CMI), User's Manual", 01/13/06;
219: The "Child and Adolescent Service Instrument (CASIS)" also known as "Child and Adolescent Level of Care Utilization System (CALOCUS)", 01/13/06;
219: The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERA30)", 01/13/06; and
219: The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office,
J. RONALD HAWS, Commissioner
APPROVED BY AGENCY: January 13, 2009
FILED WITH LFC: January 15, 2009 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on
Wednesday, February 25, 2009, at 9 a.m., at the Department of
Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky
40601. Individuals interested in being heard at this hearing shall
notify this agency in writing by Wednesday, February 18, 2009, five
(5) workdays prior to the hearing, of their intent to attend. If no
notication of Intent to attend the hearing is received by this date,
the hearing may be canceled. A transcript of this hearing will not
be made unless a written request for a transcript is made. If you do
not wish to be heard at the public hearing, you may submit written
comments on the proposed administrative regulation. Written
comments shall be accepted until Monday, March 2, 2009. 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: LaDonna Koebel, Staff Attorney, De-
partment of Juvenile Justice, 1025 Capital Center Drive, Frankfort,
Kentucky 40601, phone (502) 573-2738, fax (502) 573-0635.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel, Staff Attorney

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
incorporates by reference the policies and procedures governing
the operation of the Department of Juvenile Justice including
the rights and responsibilities of the Department of Juvenile
Justice employees and the residential and community
populations.
(b) The necessity of this administrative regulation: To conform
to the requirements of KRS 15A.065 and 15A.067.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The regulation governs every aspect
of the admissions of the Department of Juvenile Justice.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: By providing
clear and concise direction and information to the Department of
Juvenile Justice employees and the residential and community
population as to their duties, rights, privileges, and responsibilities.

(2) If this is an amendment to an existing administrative regu-
ration, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendment shall bring the Department of Juvenile
Justice into compliance with ACA Standards and show actual prac-
tice of the agency.
(b) The necessity of the amendment to this administrative
regulation: To conform to the requirements of KRS 15A.065 and
15A.067.
(c) How the amendment conforms to the content of the author-
izing statutes: It permits the Commissioner or his authorized represen-
tative to implement or amend practices or procedures to ensure
the safe and efficient operation of the Department of Juvenile
Justice.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment will help the Department
of Juvenile Justice to operate more efficiently.

List the type and number of individuals, businesses, organizations,
or state and local governments affected by this administrative regu-
lation: Approximately 1,460 employees of the residential programs,
Approximately 2,267 youth in all programs, All visitors and vol-
teers to Department of Juvenile Justice facilities

(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: To en-
sure youth are placed in the least restrictive alternative setting, and
to provide a clearer understanding of the policies and procedures
by employees and residents, thereby impacting the security and
safety of the agency and the public.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initial cost: $1,000
(b) On a continuing basis: $500
(c) What is the source of funding to be used for the implementa-
tion and enforcement of this administrative regulation: Funds
budgeted for this Fiscal Year 2010
(d) Provide an assessment of whether an increase in fees or
funding shall be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: None
(e) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases fees: None
(f) TIERING: Is tiering applied? No. Tiering was not appropriate
to 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
this administrative regulation could raise question of arbitrary ac-
ton on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Con-
stitution may be implicated as well as the Sections 2 and 3 of the
Kentucky Constitution.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

(Amendment)

780 KAR 2:030. Steering and advisory committees for area
technology centers primarily serving secondary students.

RELATES TO: KRS 151B.025(3), (5)(a), 451B.110, FEO2-2000-
976
STATUTORY AUTHORITY: KRS 151B.025(3)
NECESSITY, FUNCTION, AND CONFORMITY: KR.
151B.025(3) gives the Office of Career and [Department-for] Tech-
nical Education all responsibilities for programs, staff, and opera-
tions at state-operated secondary area vocational education and
technology centers. KRS 151B.025(3) requires that the centers be
operated in compliance with program standards established by the
Kentucky Board of Education. The Kentucky Board of Education
has established those program standards in 705 KAR 3.141. This
administrative regulation establishes standards for operations for
area technology centers primarily serving secondary students
through the use of steering and advisory committees.

Section 1. Each Kentucky area technology center serving sec-
ondary students shall:
(1) Have a steering committee. The steering committee shall
provide organized and regular contact with and participation by
representatives from each local school district.
(2) Be composed of persons from the following categories:
(a) The principal of the technology center, who shall serve as
chairman;
(b) The superintendent or designee of each cooperating school
district;
(c) A board member from each cooperating school district;
(d) One (1) principal from each cooperating school district;
(e) One (1) representative from each site-based council;
(f) One (1) or more representatives of the local labor market
area; and
(g) A guidance counselor from each cooperating school district.

Section 2. The steering committee shall consult, counsel, and
advise the principal of the area technology center and the Execu-
tive Director of the Office of Career and [Commissioner of the De-
partment-for] Technical Education on matters pertaining to the
operation of the school, including:
(1) Annual and long-range program planning;
(2) Operation and management procedures;
(3) Programs to be offered;
(4) Curriculum development;
(5) In-service training of personnel;
(6) Enrollment quotas for secondary school students from the
different participating local school districts;
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(7) Discipline of students;
(8) Class and school schedules;
(9) Transportation of students;
(10) Equipping and maintaining the facilities;
(11) Program evaluation;
(12) Student counseling and guidance; and
(13) Records and reports.

Section 3. The steering committee shall have a minimum of one (1) regularly scheduled meeting per semester and called meetings as needed.

Section 4. (1) The program advisory committee (committees) shall:
(a) Be organized at the program level. The membership of the committee (these committees) shall be representative of the businesses and industries for which the program provides education and training; and
(b) Represent the various levels of management and labor of the business or industry.
(2) Program advisory committees shall have at least two (2) meetings per year.
(3) The program advisory committees shall counsel, advise, and consult with the program staff on:
(a) Implementation of curriculum;
(b) Safely;
(c) Equipment needs;
(d) Projects for student learning;
(e) Advocacy of the program in the community;
(f) Recruitment of students;
(g) Work-based learning; and
(h) Job placement of students.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation addresses the responsibility for programs, staff and operation in state-operated secondary area technology centers; requires that the centers be operated in compliance with standards established by the Kentucky Board of Education. This regulation also establishes the requirement for use of steering and advisory committees, completion of the committee membership and outlines the committee's duties.
(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper operation of area technology centers, outlining the program standards, and establishing guidelines for steering and advisory committees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025(3) assigns responsibility of operation of area vocational centers with regards to 705 KAR 3:141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the responsibility of operation of area technology centers and compliance guidelines.
(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 is necessary to: (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 and shall correct title changes implemented with reorganization and restructuring of the administrative office.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, students and prospective students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel will issue that documents, stationery and any other related items reflect the correct titles. Current and prospective students shall be provided the correct documents.
(b) Summarizing with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied
uniformity and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 780 KAR 2:030, KRS 151B.025(3), (5), 705 KAR 3:141

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 full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 2:040. Live work projects.

RELATES TO: KRS 151B.025(3)(j) - EO-2000-099

STATUTORY AUTHORITY: KRS 151B.025(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025(3) gives the Office of Career and [Department for] Technical Education the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. This administrative regulation establishes the procedures for accepting live work projects in a Kentucky TECH facility.

Section 1. Definitions. (1) "Kentucky TECH" means the system of state-operated secondary technical education programs.

(2) "Live work" means a project, which meets a curriculum requirement, completed for an individual or organization.

Section 2. A Kentucky TECH school may accept live work projects if the administrative and instructional staffs deem them appropriate for training purposes.

Section 3. A Kentucky TECH school that accepts live work shall adhere to the following standards:

(1) All services performed shall be documented on a completed Office of Kentucky TECH Work Order form.

(2) The school administrator shall be responsible for all unused work order forms and assigning and recording all services performed in a work order log book.

(3) Any individual or organization requesting live work shall be provided a copy of the school's policy for accepting and performing live work. Any person [Peevisee] committing live work shall sign the policy form indicating that he understands [they understand] the policies and agrees [agree] with them.

(4) A live work order [order] shall be approved and initiated by the school administrator and by the instructor of the class. Live work shall not be approved for an instructor in his program for his own personal use.

(5) If a live work project requires more than one (1) hour labor, the individual or organization requesting the live work shall pay the fee established in 780 KAR 2:140, Section 9.

(6) Any person or organization for whom live work is accepted shall purchase the necessary materials for the job to be completed. With the permission of the person or organization, the school may purchase the materials and recover the cost of the materials plus twenty (20) percent for handling. The Kentucky TECH school may require the students participating in the live work project to reimburse or purchase the materials required for the project.

(7) A payment shall not be handled by an instructor. Live work orders shall not be released until payment for parts, supplies, and other cost items has been made and documented by authorized personnel in the school.

(8) Projects of a family member or other individual [members or other individuals] shall not be accepted in the name of a student [names of students].

(9) A school employee [employees] shall not:

(a) Guarantee or be liable for live work; or

(b) Be responsible for the theft or loss of an article left in a school.

Section 4. A Kentucky TECH school shall not be obligated to accept live work projects. Live work [shall not be done which is] of a production nature and in competition with business or industry or for the purpose of making a profit shall not be done.

Section 5. Incorporation by Reference. (1) "The Office of Kentucky TECH Work Order - Agreement form", July 2008 [form: June 2008], is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Career and [Department for] Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capital Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

1. Provide a brief summary of:
   (a) What this administrative regulation does: This regulation gives the Office of Career and Technical Education authority to establish a system by which “live work projects” may be utilized in association with curriculum requirement and training.
   (b) The necessity of this administrative regulation: This regulation is necessary to outline the process, related fees, and curriculum requirements and associated forms by which “live work” may be performed.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Office of Career and Technical Education as the entity responsible for promulgating administrative regulations necessary to administer and carry out career and technical education training.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies which agency is responsible for establishing guidelines for implementing “live work programs” in area technology centers.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS Chapter 13A.
      (b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.
      (c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with KRS 151B.025(9) and shall correct title changes implemented with reorganization and restructuring of the administrative staff.
      (d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (3) provides that the Office of Career and Technical Education is the entity responsible for the promulgation of administrative regulations relating to live work projects at area technology centers.
   (3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, students and prospective students.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if 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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents and official stationery, so that current, accurate documents may be provided to current and prospective students and all appropriate contacts.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
   (3) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: This regulation, as amended, shall not generate any new or additional costs.
      (b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
      (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
   (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 regulation, as amended, shall not increase any fees or funding.
   (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees, either directly or indirectly.
   (9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025(3)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 full year? 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 fiscal estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

<table>
<thead>
<tr>
<th>Revenues (+/-): None</th>
<th>Expenditures (+/-): None</th>
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<td>Other: Explanation:</td>
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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

Amendment

780 KAR 3:060. Probationary periods.

RELATES TO: KRS 151B.035, 151B.070
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Office of Career (State Board for-Adult) and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern personnel rules for certified and equivalent employees in the Office of Career [Board for-Adult] and Technical Education. KRS 151B.035 specifies that the executive director [state board] promulgate comprehensive administrative regulations for the certified and equivalent staff governing probationary periods, limited employment status and continuing employment status.

Section 1. Initial Probationary Period. (1) All certified and equivalent staff shall serve the an initial probationary period required in KRS 151B.070(1) of twelve months. The initial probato-

-1855-
nary period shall be computed from the effective date of the appointment to the corresponding date in the twelfth month.

(2) An employee who satisfactorily completes the initial probationary period in a given classification shall be eligible for reemployment on limited status.

(3) An employee who does not satisfactorily complete the initial probationary period shall not be eligible for reemployment in that job classification in the Office of Career [Department for Adult] and Technical Education.

Section 2. Promotional Probationary Period. The promotional probationary period and reversion rights of a continuing status employee promoted to the unclassified system or a certified or equivalent position are set forth in KRS 151B.035 [who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or in the same job classification in the same region as the former position]. Any employee failing to complete the promotional probationary period shall be notified in writing at least ten (10) working days prior to the effective date of the reversion. The notification shall advise the employee of the effective date of the reversion.

(1) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the 12th month following promotion.

(2) A teacher serving a probationary period concurrent with an internship for teacher certification may have the initial probationary period extended one (1) more year if the internship committee so recommends and the executive director [Commissioner] desires to extend the options.

JOHN MARZ, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the administrative regulation shall be held on February 24, 2009 at 9 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. Send not 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 549-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation specifies that the Executive Director of the Office of Career and Technical Education promulgate regulations governing probationary periods, limited employment status and continuing employment status for the certified and equivalent staff.
(b) The necessity of this administrative regulation: This regulation is necessary to establish guidelines in defining the levels of employment probation for the certified and equivalent staff.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating regulations which governing probationary periods.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation delineates the levels of, and the requirements for, the probationary period for certified and equivalent staff.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to 1) accurately reflect the name of the state agency and associated personnel, 2) cite the appropriate statutory provisions and 3) clarify references for unsuccessful completion of Promotional Probationary Period, and 4) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide conformity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: The statutory reference provides succinct guidance on probationary periods for certified and equivalent staff.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall ensure that certified and equivalent staff shall be provided accurate information relating to probationary periods.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure accuracy in calculating probationary periods.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of a state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation
that requires or authorizes the action taken by the administrative regulation. 780 KAR 2.060, KRS 151B.035, 151B.070

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

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

(c) How much will it cost to administer this program for the first full year? There shall not be any cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall not be any cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

Education and Workforce Development Cabinet
Department for Workforce Investment
Office of Career and Technical Education

780 KAR 3.065. Certified and equivalent service administrative regulations.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035(2)(b) requires the Executive Director of the State Board to promulgate comprehensive administrative regulations for the certified and equivalent staff governing programs to improve the work effectiveness of employees and to provide for the safety, health and welfare of employees covered by KRS Chapter 151B. This administrative regulation establishes requirements relating to certified and equivalent staff.

Section 1. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

(a) The attempted, threatened or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that resembles a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking as defined by KRS 508.130;

(e) Striking, slapping or otherwise physically attacking another person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or a member of the general public, or threatens or intimidates a state employee or a member of the general public.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 2. Kentucky Employee Assistance Program (KEAP).

(1) Establishment of Kentucky Employee Assistance Program. Pursuant to 101 KAR 2:160 the Personnel Cabinet has established and administers through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services.

(2) A certified or equivalent employee covered by KRS Chapter 151B may participate in the Kentucky Employee Assistance Program as established in 101 KAR 2:160.

Section 3. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state designated holiday, a paycheck shall be issued on the workday preceding the holiday.

Section 4. Workers’ Compensation Fund and Program. Certified and equivalent employees shall be covered under the Self-Insured Workers’ Compensation Fund and Program established by KRS 18A.375 and 101 KAR 2:140.
issuance of paychecks, and workers compensation
(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel and (2) conform to the requirements of KRS Chapter 15A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B 035 and shall correct title changes implemented with reorganization.
(d) How the amendment will affect the administrative administration of the statutes: KRS 151B 035 designates that the Executive Director of the Office of Career and Technical Education is responsible for promulgating comprehensive regulations for governing programs for certified and equivalent staff.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Certified and equivalent employees shall have access to the regulations.
(b) How much of this administrative regulation or amendment, if new or by the change, if it is an amendment, will a new or additional title cost?
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 780 KAR 3:065, 151B035, KRS Chapter 151B.
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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall not be any cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall not be any 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.
(6) Revenues (+/-): None
Expenditures (+/): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B 035 requires the Executive Director for the Office of Career (State-Board for Adult) and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B 035 KRS 151B 035(5)(e)(h) specifies that the executive director (State-Board) shall promulgate comprehensive administrative regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence. The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq., as implemented by 29 C.F.R. Part 825, requires the granting of family and medical leave. This administrative regulation establishes those leave requirements.

Section 1. Attendance. (1) A full-time employee (employee) shall be required to work thirty-seven and one-half (37 1/2) hours per week for any (all) positions unless otherwise specified by the appointing authority.
(2) The normal work day for a school-based employee (employee) shall coincide with the appropriate school schedule as recommended by the principal and approved by the executive director (department).
(3) The executive director (department) may require an employee (employees) to work hours and work days other than the normal schedule including an inclement weather schedule if it is in the best interest of the agency.
(4) An employee who works within a school or division which requires (Employees who work within schools or divisions which require) more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. An employee (Employee) shall be given as much advance notice as possible when schedules are changed.
(5) An employee [Employees] shall be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of the regular work schedule.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be earned forward from one (1) pay period to another shall be 200 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be earned forward under this administrative regulation, and shall otherwise allow the use of compensatory leave if it shall [will] not unduly disrupt the operations of the agency.

(b) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of 200 compensatory hours.

(c) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

(d) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

1. Spring break; or

2. Christmas break, except on the four (4) official holidays normally given to state employees.

(e) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

Section 3. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Annual Leave Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>1 day per month</td>
</tr>
<tr>
<td>60-119 months</td>
<td>1 1/4 days per month</td>
</tr>
<tr>
<td>120-179 months</td>
<td>1 1/2 days per month</td>
</tr>
<tr>
<td>180-239 months</td>
<td>1 3/4 days per month</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>2 days per month</td>
</tr>
</tbody>
</table>

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall accrue leave during the actual school term, unless he is approved to work and actually works extended employment.

(d) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(e) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(f) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for annual months of service prior to retirement.

(g) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for prior annual months of service.

(h) An employee dismissed for cause who has been reinstated to state service shall receive credit for annual months of service prior to dismissal, except if the dismissal resulted from a violation of KRS 151B.090.

(i) Part-time, temporary, and seasonal employees shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hour.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) [School-based employees shall take time off during the following times.

1. Spring break; and

2. Christmas break, except on the four (4) official holidays normally given to state employees.

(e) In cases of special or emergency circumstances, the supervisor may request an employee to work during the times identified in paragraph (d) of this subsection without loss of annual leave.

(f) Absence due to sickness, injury, or disability in excess of the amount available for those purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(h) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(i) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(e) of this section.

(j) Annual leave on separation.

(k) An employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual
leave to not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday shall retain accumulated annual leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, the estate shall be entitled to receive pay for the unused portion of the employee’s accumulated annual leave.

(f) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived; if:

1. The employee resigns, or is laid off because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 4. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(i) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(j) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except if the dismissal resulted from a violation of KRS 151.000.

(k) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) The [An] appointing authority or his designee shall grant or may require the use of accrued sick leave with pay of an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority or his designee may require the employee to provide a doctor’s statement certifying the employee’s need to care for a family member;
4. Would jeopardize the health of himself or others at the work station because of a contagious disease or demonstration of behavior that might endanger the employee or others;
5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days; or
6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(d) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(e) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) The [An] appointing authority or his designee shall grant sick leave without pay for the duration of an employee’s impairment by injury or illness, if:
1. The total continuous leave does not exceed one (1) year; and
2. The employee has used or been paid for all accumulated annual, compensatory and sick leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority or his designee shall notify the employee in writing of the leave without pay status.

(c) The appointing authority or his designee may require a periodic doctor's statement during the year attesting to the employee’s continued inability to perform essential functions of his duties with or without reasonable accommodation.

(d) The [An] appointing authority or his designee may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has been given notice of his inability to resume his duties following sick leave without pay, the appointing authority or his designee shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:
1. Has been on one (1) year continuous sick leave without pay;
2. Has been requested by the appointing authority or his designee in writing to return to work at least ten (10) days prior to the expiration of sick leave;
3. Is unable to return to his former position;
4. Has been given priority consideration by the appointing authority or his designee for a vacant, budgeted position with the same agency, for which he qualified and was qualified in performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority or his designee in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of
this subsection shall retain reinstatement privileges.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave within 30 days of the absence.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or the designee. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) The [An] appointing authority or his designee may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(7) The [An] appointing authority or his designee shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.


(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar-year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 6. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 7. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority or his designee may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) The [An] appointing authority or his designee shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the time the polls are open, up to a maximum of four (4) hours.

Section 9. Special Leave of Absence. (1) If approved by the secretary, the [An] appointing authority or his designee may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) The [An] appointing authority or his designee, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) The appointing authority or his designee may place an employee on special leave with pay for investigatory purposes for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct.

(a) The employee shall be notified in writing by the appointing authority or his designee that he is being placed on special leave for investigatory purposes, and the reasons for being placed on leave.

(b) If the investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Office of Career and [Department for] Technical Education [and the Department for Adult Education and Literacy-Bec].

(c) The appointing authority or his designee shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned in the interim.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered...
by the provision of the Fair Labor Standards Act; and
(c) Constitute grounds for disciplinary action.
(3) An employee who has been absent without leave or notice to
the supervisor for a period of ten (10) working days shall be
considered to have resigned the employment.

Section 11. Absences Due to Adverse Weather. (1) An em-
ployee, who is not designated for mandatory operations, and
chooses not to report to work or chooses to leave early in the event
of adverse weather conditions such as tornado, flood, blizzard, or
ice storm, shall have the time of the absence reported as:
(a) Charged to annual or compensatory leave;
(b) Taken as leave without pay, if annual and compensatory
leave has been exhausted; or
(c) Deferred in accordance with subsections (2) and (4) of this
section.
(2) An employee who is on prearranged annual, compensatory
or sick leave shall charge leave as originally requested.
(3) When [Where] operational needs allow, except for an em-
ployee in mandatory operations, management shall make every
reasonable effort to arrange schedules whereby an employee shall
[will] be given an opportunity to make up time not worked rather
than charging it to leave.
(4) An employee shall not make up work if the work would
result in the employee working more than forty (40) hours in a
workweek.
(a) Time lost shall be made up within four (4) months of the
occurrence of the absence. If it is not made up within four (4)
months, annual or compensatory leave shall be deducted to cover
the absence, or leave without pay shall be charged if no annual or
compensatory leave is available.
(b) If an employee transfers or separates from employment
before the leave is made up, the leave shall be charged to annual
or compensatory leave or deducted from the final paycheck.
(c) If hazardous weather conditions occur, as
created by a tornado, flood, ice storm or blizzard, and it becomes
necessary for authorities to order evacuation or shut down the
place of employment, the following provisions shall apply:
(a) An employee who is required to evacuate or who would
report to a location that has been shut down shall not be required
to make up the time that is lost from work during the period official-
ly declared hazardous to life and safety.
(b) An employee who is required to work in an emergency
situation shall be compensated pursuant to the provisions of Sec-
tion 2 of this administrative regulation and the Fair Labor Stan-
ards Act as amended.

Section 12. Blood Donation Leave. (1) An employee who, dur-
ing regular working hours, donates blood at a licensed blood center
certified by the Food and Drug Administration shall receive four (4)
hours leave time, with pay, for the purpose of donating and recupe-
rating from the donation.
(2) Leave granted under this section shall be used at the time
of the donation unless circumstances as specified by the supervi-
sor require the employee to return to work. If the employee returns
to work, the unused portion of the leave time shall be credited as
compensatory leave.
(3) An employee shall request leave in advance to qualify
for blood donation leave.
(4) An employee who is deferred from donating blood shall not:
(a) Be charged leave time for the time spent in the attempted
donation; and
(b) Qualify for the remainder of the blood donation leave.

Section 13. Eligibility for State-Paid Health and Life Insurance
Benefits. (1) A twelve (12) month employee who is eligible for
state-paid health and life insurance benefits under the provisions
of KRS Chapter 151B shall have worked or been on paid leave or
family and medical leave, other than educational leave, during any
part of the previous month, except between the dates of
June 16 and July 31.
(2) A ten and one-half (10 1/2) month employee who is eligible
for state-paid health and life insurance benefits under the provi-
sions of KRS Chapter 151B shall have worked or been on paid
leave or family and medical leave, other than educational leave,
shall correct title changes implemented with reorganization and restructuring of the administrative office.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the Career and Technical Education centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 65 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall ensure that documents, forms, and any other related items reflect the correct titles and that leave of school based employees is properly administered.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents, and stationery and leave for school based employees shall be properly addressed.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Office for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035; 151B.090: Chapter 151B, Chapter 337, 29 U.S.C. 201-219, 29 C.F.R. Parts 825; KRS 151B.035 (3) (g); Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq., as implemented by 29 C.F.R. Part 825; Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 5.

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

(a) How much 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 shall 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 shall be generated.

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

(d) How much will it cost to administer this program for subsequent years? There shall be 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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

700 KAR 3:075. Sick leave sharing procedures for certified and equivalent service.

RELATES TO: KRS 18A.196, 18A.197, 151B.035(3)(q)(h)
STATUTORY AUTHORITY: KRS 151B.035(3)(q)(h)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the executive director [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035(3)(q)(h) specifies that the executive director [State Board] shall promulgate comprehensive administrative regulations for the certified and equivalent staff governing sick leave. This administrative regulation establishes requirements for the sick leave sharing program.

Section 1. Applicability of Sick Leave Sharing Program. Certified and equivalent employees may participate in the Sick Leave Sharing Program established by KRS 18A.196 and 18A.197 and 101 KAR2:105 and administered by the Personnel Cabinet.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 29th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals Interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 shall be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: John Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capitol Plaza Tower, 29th Floor, Frankfort, Kentucky 40601; phone (502) 564-3022; fax (502) 546-2241.

- 1863 -
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the certified and equivalent staff governing sick leave sharing.
(b) The necessity of this administrative regulation: This administrative regulation establishes requirements for the sick leave sharing program for certified and equivalent employees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalent employees relating to the sick leave sharing program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides proper reference for certified and equivalent staff relating to sick leave sharing.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 designates that the Office of Career and Technical Education is responsible for operating the state-operated secondary area technology centers and establishes guidelines for compliance.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationary and any other related items reflect the correct titles. Instructors shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(d) Provide a statement of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(e) Whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly
(f) TIERING. Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 151B.035; KRS 18A.105, 18A.197, 151B.035(9)(g); 101 KAR 2:05
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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)
780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 authorizes the Executive Director of the Office of Career and [Commissioner of the Department for] Technical Education to promulgate comprehensive administrative regulations relating to the extent and duration of the Kentucky Tech System school term, use of school days, and extended employment. This administrative regulation establishes the school term, and employment provision for employees.

Section 1. (1) The regular work year for any secondary instructor in a state-operated area technology center [institutes in area centers and state vocational technical schools] shall be August 1 through June 15.
(2) During this work year, secondary students shall begin classes based on the participating school district schedules.
(3) An area technology center shall not be closed when secondary school students need to be served for the participating
school districts.
(4) Any employee required to work on an official holiday in order to serve students shall be granted compensatory time.
(5) If a school district closes due to inclement weather, staff in the area technology center [area school] shall report to work as usual or take official leave unless a state of emergency is declared by the Governor or the appointing authority.

Section 2. (1) A secondary instructor in an area technology center [instructor in area technology centers] may be employed up to six (6) weeks beyond the ten and one-half (10 1/2) [10.5] month calendar year (August 1 through June 15) for specified activities which cannot be carried out routinely during the year and which include at least three (3) weeks of planned direct student contact.
(2) The maximum extended time for an instructor without three (3) weeks of planned direct student contact shall be three (3) weeks.
(3) Extended instructional summer options shall be planned jointly by the instructor and school principal or executive director [commissioner].
(4) Extended employment activities shall conform to the following conditions:
(a) Up to six (6) weeks may be approved for supervision of students in specific classroom instruction. Before approval shall be granted for extended time, an instructional plan for the summer teaching activity shall be approved by the central office. This plan shall include purpose, classes to be taught, time schedule, and inclusive dates.
(b) Up to one (1) week may be approved for required state technical update and school in-service.
(c) Up to two (2) weeks may be approved for staff or industry exchange and other educational approved programs. The executive director [commissioner] may request that the secondary instructor [instructor] perform other essential services for which extended employment shall be provided. The [these] special request [requests] shall be handled on an individual basis.
(5) A secondary instructor in an area technology center shall make an official request for extended employment to the regional executive director by April 15 and, by May 30 of each year, shall receive written notification of approved extended days.

Section 3. (1) Any instructor employed ten and one-half (10 1/2) months may request that his salary be paid in twenty-four (24) paychecks.
(2) The last two (2) paychecks shall be adjusted if necessary to reflect any salary variance due to changes in work schedules.

Section 4. (1) All area technology centers shall be officially closed to students on the official holidays designated for Christmas and New Year's.
(2) An employee may either work during this period or be on some form of approved leave. If the employee desires to work during this period, he may do so only upon the submission of a work plan by the employee and the approval of the plan by the employee's supervisor prior to the initiation of the work.
(3) The principal may require an employee to work for safety or security reasons.

Section 5. (1) Extended employment shall be restricted to specific activities approved by the Executive Director of the Office of Career and [commissioner of the department for] Technical Education.
(2) An application [application] for extended work year extended employment shall be received by the Executive Director of the Office of Career and [Commissioner of the Department for] Technical Education on or before April 15th in order to be considered for approval.

Section 6. Incorporated by Reference. (1) "Extended Employment for 10 1/2 Month Employees", April 2007 [June 2003], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education and [Cabinet for] Workforce Development Cabinet, 500 Mero Street, 20th Floor,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capitol Plaza Tower, 2001 Floor, Frankfort, Kentucky 40601, phone (502) 564-3022; fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the certified and equivalently certified instructional personnel and extended employment for school term, use of school days and extended employment.
(b) The necessity of this administrative regulation: This administrative regulation establishes the school term, and employment provision for employees.
(c) How this administrative regulation conforms to the content of the enacting statute: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalently certified employees relating to the school term, and use of school days and extended employment.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth requirements relating to the extent and duration of the Kentucky Tech System school term, use of days, and extended employment.
(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the enacting statute: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 Area Technology Centers and Offices of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(c) As of the date of this filing of this regulations, what benefits will accrue to the entities identified in question (3)? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) Tiering: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department of Workforce Investment, and the Office of Career and Technical Education.

3. Identify any state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

(a) How much 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 shall 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 shall be generated.

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

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

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

Revenues (+/-): None

Expenditures (+/-): None
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of comprehensive administrative regulations for the administration of a personnel system in the Office of Career and Technical Education.
(b) The necessity of this administrative regulation: This administrative regulation establishes a personnel system in the Office of Career and Technical Education.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for a personnel system and related documents.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for certified and equivalent staff relating to records and reports in the 151B personnel system.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall affect titles implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet’s reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 151B.035
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year this 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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

Education and Workforce Development Cabinet
Department for Workforce Investment
Office of Career and Technical Education
[Amendment]

780 KAR 3:100. Employee actions.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director for the Office of Career [State Board for Adult] and Technical Education and Technical Education to promulgate comprehensive administrative regulations [with the proviso of KRS 151B.036. KRS 151B.035(3) specifies that the state board shall promulgate comprehensive administrative regulations) for the certified and equivalent staff governing promotion, demotion, transfer, and reemployment. This administrative regulation establishes the method for determining an employee's work station and the requirements governing employee actions.

Section 1. Definition: Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.
(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appoint-
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ment to the employee’s position.

(3) Each employee shall be assigned to a work station by the appointing authority or his designee.

(4) A work station may be changed to better meet the needs of the agency.

(5) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days. The employee shall be reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority or his designee shall notify the employee in writing prior to the effective date of the action.

(6) An appointing authority or his designee may assign an employee to work in a different site within the county of employment. Reassignment within a county shall not be an appealable action.

Section 2. Promotion. Any employee in the certified and equivalent personnel system may be promoted to a position of greater scope of discretion and responsibility or to the unclassified system in the Office of Career and [Department for] Technical Education [or Department for Adult Education and Literacy].

Section 3. Demotion. (1) An appointing authority or his designee shall demote an employee who makes a written request for voluntary demotion.

(2) The written request shall:

(a) Be on a completed Voluntary Transfer or Voluntary Demotion Form; and

(b) Include:

1. A statement of the reason for the request;
2. The effective date of the demotion;
3. Identifying information concerning the position demoted from and to; and
4. A waiver of the right of appeal concerning the demotion.

(3) A copy of the request shall be placed in the employee’s official file.

Section 4. Transfer. (1) Any employee in the certified and equivalent personnel system may be transferred from one (1) office to another and from one (1) district to another.

(2) The transfer [Transfers] shall be on a voluntary or involuntary basis.

(b) Unless an employee requests a transfer in writing, the transfer shall be deemed to have been made on an involuntary basis.

(c) The appointing authority or his designee shall establish a reasonable basis for selecting an employee for involuntary transfer. If the appointing authority or his designee is on an involuntary basis, the employee shall receive written notice of his transfer prior to the effective date of the transfer.

(3) Following notification of an involuntary transfer, an employee shall report for work at the work station to which transferred on the effective date of the transfer.

(c) The notice shall be in writing, shall:

1. State:
   a. The effective date of the transfer;
   b. The reason for the employee’s selection for transfer;
   c. The new work station; and
   d. The employee’s obligation to report to the new work station; and
   2. Advise the employee that he has the right to appeal the transfer to the Kentucky Technical Education Personnel Board [State Board for Adult and Technical Education] within thirty (30) days of receipt of the notice excluding the day that he received notification.

(d) When the employee is notified, copies of the notice shall be forwarded to the Executive Director of the Office of Career and Commissioner of the Department for Technical Education [or the Department for Adult Education and Literacy].

(4) If an involuntary transfer is to a position with a work station in a different county, the following provisions shall apply:

(a) The employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer.

(b) The appointing authority or his designee shall pay the employee’s moving and travel expenses following transfer for thirty (30) days following the effective date of transfer in accordance with 200 KAR 2.006.

(c) The notice required by subsection (3) of this section shall advise the employee of the provisions of this subsection.

(5) (a) If an employee with status requests in writing that he be transferred, the appointing authority or his designee may make a voluntary transfer.

(b) The written request shall:

1. Be on a completed Voluntary Transfer or Voluntary Demotion Form; and
2. Include:
   a. A statement of the reason for the request,
   b. The effective date of the transfer,
   c. Identifying information concerning the position transferred from and to; and
   d. A waiver of the right to appeal concerning the transfer.

(c) A copy of this request shall be forwarded to the Executive Director of the Office of Career and Commissioner of the Department for Technical Education [or the Department for Adult Education and Literacy].

Section 5. Reemployment. Reemployment in the certified and equivalent personnel system shall occur in accordance with KRS 151B.030. Any former employee [employees] on a reemployment list shall meet all qualifications in order to be considered for a position.

Section 6. Resignations and Retirements. (1) An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority or his designee.

(2) A resignation or notice of retirement shall be submitted at least thirty (30) calendar days before the final working day. A copy of an employee’s resignation shall be attached to the advice effecting the separation and be filed in the employee’s service record in the department.

(3) Failure of an employee to give thirty (30) calendar days notice with his resignation or notice of retirement may result in forfeiture of accrued annual leave.

(4) Any part-time hourly employee [employees] who has [have] not worked for six (6) months shall be deemed to have resigned.

Section 7. Temporary Overlap. The appointing authority or his designee may place an employee in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days for training purposes.

Section 8. Retirement. If an employee voluntarily retires, he shall be considered [as] separated without prejudice.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education and [Cabinet for] Workforce Development Cabinet, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, of their intent to attend. If notification of intent to attend the hearing is not 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 March 2, 2009. 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: John Marks, Executive Director; Office of Career and Technical Education, 500 Mero Street, Capital Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 565-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the certified and equivalent staff governing promotion, demotion, transfer, and reemployment. This regulation also established a method for determining a certified and equivalent employee's work station and requirements governing employee actions.

(b) The necessity of this administrative regulation: This administrative regulation establishes the process for employee actions relating to promotion, demotion, transfer, reemployment, and work station.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalent employees relating to promotion, demotion, transfer, reemployment, and work station.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth requirements for promotion, demotion, transfer, and reemployment. This also establishes the method for determining an employee’s work station and requirements governing employee actions.

(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationary.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 151B.035, 151B.035 (3); 200 KAR 2.006; KRS 151B.080

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 shall 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 shall be generated.

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(2009 Amendment)

780 KAR 3:110. Disciplinary actions.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS

- 1869 -
151B.035 requires the Executive Director of the Office of Career [State Board for Adult] and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the executive director [state board] promulgate administrative regulations for the certified and equivalent staff governing dismissals, suspensions, and any other disciplinary measures.

Section 1. General Provision. Except as otherwise provided in these administrative regulations, the tenure of an employee in the certified and equivalent personnel system shall be during good behavior and the satisfactory performance of his duties. The appointing authority or his designee may discipline an employee [employee] for lack of good behavior or for unsatisfactory performance of duties. Lack of good behavior or the unsatisfactory performance of duties include but are not limited to the following:

1) Insubordination, including but not limited to any violations of a lawful rule [violation of lawful rules] and administrative regulation [regulations] established for the operation of schools and central office in the Department of Adult and Technical Education and refusal to recognize or obey the [regional executive director, school director] school principal, or any other supervisory personnel with the office [department] in the performance of his [their] duties;

2) Immoral character or unbecoming conduct;

3) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the individuals involved including but not limited to;

(a) Chronic absenteeism or excessive tardiness;

(b) Inability to control students or exert appropriate supervision of subordinates;

(c) Inappropriate discipline of students or treatment of subordinates and peers;

(d) Poor teaching or supervisory habits;

(e) Lack of completion of records and required reports.

Section 2. Dismissals. When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Executive Director of the Office of Career [Commissioner of Adult] and Technical Education on the same date notice is delivered to the employee. Probationary and limited status employees do not have appeal rights except as provided in KRS 151B.055, Section 10 (Chapter 551B, Section 46(4)).

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the Executive Director of the Office of Career [Commissioner of Adult] and Technical Education on the same date the notice is delivered to the employee.

Section 4. Suspension. When the employee is notified, copies of the notice of suspension shall be forwarded to the Executive Director of the Office of Career [Commissioner of Adult] and Technical Education on the same date the notice is delivered to the employee.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals Interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022; fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the certified and equivalent staff governing dismissals, suspensions, and any other disciplinary measures.

(b) The necessity of this administrative regulation: This administrative regulation outlines the process by which disciplinary actions are defined and implemented.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalent staff relating to disciplinary actions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth requirements and procedures governing dismissals, suspensions, and any other disciplinary measures of certified and equivalent staff.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to the requirements of KRS Chapter 19A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

3) List the type and number of individuals, businesses, organizations, or state and local government units affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
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(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035; 151B.055, Section 10

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

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

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 3:120. Appeals and hearings.

RELATES TO: KRS Chapter 13B, 151B.035[(3)(4)], 151B.055, 151B.085[,] EO 2001-796
STATUTORY AUTHORITY: KRS 151B.035[(0)(3)(6)]-EO 2001-796

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035[(3)(4)] requires the Executive Director of the Office of Career and [State–Board–for–Adult] and Technical Education to promulgate administrative regulations governing employee appeals. KRS 151B.035 requires the Executive Director of the Office of Career and [EO 2001-796 abolished the State Board and transferred the board’s duties and functions to the Department for Technical Education. EO 2001-796 requires the Commissioner of the Department for] Technical Education to promulgate comprehensive administrative regulations for an appeal system for aggrieved employees. This administrative regulation establishes the appeals and hearings requirements for employees.

Section 1. Definitions. (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).
(2) "Qualified individual with a disability" is defined by KRS 344.030(1).
(3) "Reasonable accommodation" is defined by KRS 344.030(6).
(4) "Religion" is defined by KRS 344.030(7).
(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. General Provisions. (1) To file an appeal, an employee shall file a completed Appeal Form, and other documents relating to the appeal, with the Kentucky Technical Education Personnel Board through the office of the ombudsman of the Office of Career and [Department–for–Technical Education].

(2) An appeal or document relating to an appeal shall be filed within thirty (30) calendar days after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence. If the 30th day of the filing period falls on a day when the Office of Career and [Department–for–Technical Education] is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) An appeal shall be heard in Frankfort, Kentucky, or at a location mutually acceptable to the hearing officer and the employee. The hearing officer shall make the final determination of the location of the hearing.

(4) If the appeal form indicates that the employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the employee shall be submitted by that attorney.

(5)(a) Unless otherwise directed by the board, the ombudsman of the Office of Career and [Department–for–Technical Education] shall assign a hearing officer or officers to an appeal.

(b) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief.

(c) If the appeal is to be heard by the full board, the chairman of the board shall serve as the chief hearing officer.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal.

Section 4. Continuances. (1) Except as provided by subsection (5) of this section, a party shall request a continuance of a scheduled hearing for good cause by following the procedures established in subsections (2) and (3) of this section.

(2) A request for continuance shall:
(a) Be written;
(b) State the reason for the request;
(c) Include proposed dates for rescheduling the hearing;
(d) Be filed with the board; and
(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) As objection to a request for a continuance shall:
(a) Be written;
(b) State the reason for the objection to the request for continuance;
(c) Be filed with the board; and
(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

(4) A continuance may be granted in extraordinary circumstances by the hearing officer.

(5) A request for a continuance based on a bona fide personal emergency may be granted upon appropriate justification at the discretion of the hearing officer.

(6)(a) At the direction of the hearing officer, the ombudsman of
the Office of Career and [Department for] Technical Education shall execute and transmit to all parties an interim order either granting or denying the continuance.

(b) If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or the hearing has been continued generally.

Section 5. Prehearing Procedures. (1) A motion, request or filing shall:
(a) Be in writing;
(b) Be filed with the board through the office of the ombudsman of the Office of Career and [Department for] Technical Education; and
(c) Be served on all other parties.

(2)(a) An interim order by the hearing officer shall be executed and transmitted by the board through the ombudsman of the Office of Career and [Department for] Technical Education to all parties.

(b) Unless an interim order provides for review by the board prior to the conclusion of a hearing, the board shall review an interim order when it considers the recommended order, record, and exceptions.

(3) If an employee retains counsel subsequent to filing an appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the employee shall be submitted by that attorney.

(4) An employee shall notify all parties and the board in writing of a change of address or a change in counsel.

(5) A deposition may be taken only in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

(6) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of a party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(7) An agreed settlement shall be submitted in writing for the full board's review and final action.

The ombudsman of the Office of Career and [Department for] Technical Education, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:
(a) Procedural questions; or
(b) Scheduling of hearings.

Section 6. Conduct of Hearing. (1) The hearing shall be conducted pursuant to:
(a) KRS Chapter 13B; and
(b) This administrative regulation.

(2) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(3) A party shall provide three (3) copies of an exhibit that is to be introduced as evidence. Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

Section 7. Board Review and Action. (1) A response to a written exception to a recommended order shall be filed in accordance with KRS 13B.110(4). A response shall be:
(a) In writing; and
(b) Served on all parties.

(2) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(3) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:
(a) In writing;
(b) Filed with the board within fifteen (15) days of issuance of a recommended order; and
(c) Served on all parties.

(4) The board shall issue a final order in accordance with KRS 13B.120.
tion of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(2) The number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationary and any other related items reflect the correct titles.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and statutorily.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 151B.035, 151B.055, 151B.065; KRS 344.030 (1) (6) (7) (9); 138.110 (4); 138.120
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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 3:130. Employee grievances.

RELATES TO: KRS 151B.035(3)(l)(w), 151B.055[-EO-2001-706]

STATUTORY AUTHORITY: KRS 151B.035(3)(l)(w) [-EO-2001-706]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3)(l)(w) requires the Executive Director of the Office of Career State Board for Adult and Technical Education to promulgate comprehensive administrative regulations providing employee grievance and complaints. KRS 151B.035(3)(l) requires the Executive Director of the Office of Career and [EO-2001-706 abolished the State Board and transferred the board's duties and functions to the Department for Technical Education. EO-2001-706 requires the Commission of the Department for Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern the process for a fair and equitable grievance system. This administrative regulation establishes the requirements governing employee grievances.

Section 1. Definition. "Grievance" means a complaint filed by an employee who concerns working conditions over which the Office of Career and [Department for] Technical Education has control and which has specifically occurred, or of which the employee has become aware, within thirty (30) calendar days prior to filing.

Section 2. General Provisions. (1) An employee in the certified and equivalent personnel system who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this administrative regulation.
(2) A grievance concerning an action which is appealable directly to the Kentucky Technical Education Personnel Board may be filed with the Office of Career and [Department for] Technical Education. The filing of a grievance with the department shall not:
(a) Prohibit the employee from filing an appeal with the Kentucky Technical Education Personnel Board;
(b) Extend the thirty (30) calendar day appeal period.
(3) An employee utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.
(4) The appointing authority shall inform all employees in the Office of Career and [Department for] Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review.
(5) The Executive Director of the Office of Career and [Commissioner of the Department for] Technical Education shall make available to employees, through the appointing authority, the "Grievance Form", which shall be used to file a grievance. The form shall contain a notice that if, the grievance concerns an action appealable directly to the Kentucky Technical Education Personnel Board pursuant to KRS 151B.055, the employee's right to file an appeal shall not be extended beyond thirty (30) calendar days.
(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing a grievance.
Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence, or the employee becoming aware through the exercise of due diligence, of the action which is the subject of the grievance. If an act of the immediate supervisor is the basis for the grievance, the grievance shall be filed with the next line supervisor.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) If a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, disability or age, the recipient shall immediately notify the Executive Director of the Office of Career and Technical Education and the Office of Equal Employment Opportunity (EEO) Coordinator to comply with the affirmative action plan.

(4) Any interview [interviews] to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entail those employees to compensate time.

(5) Any interview [interviews] to evaluate or investigate the grievance held with the grievant or other employee [employees] shall not require the use of leave time.

(6) Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1)(a) Except as provided in Section 3(1), the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the second line supervisor.

(c) If the area supervisor or the division director is the first line supervisor, the request for review shall automatically be requested from the Ombudsman for the Office of Career and Technical Education.

(2) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance. If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the Ombudsman in the Department for Technical Education.

(3) If the Ombudsman is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the Executive Director of the Office of Career and Technical Education or his designate for a final determination. The executive director [commissioner], upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(4) Modification of the procedures set forth in this section necessary to accommodate organizational structure within the Office of Career and Technical Education may be made only upon approval of the Executive Director of the Office of Career and Technical Education.

(5) Failure of supervisory or management personnel to respond within prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(6) An intermediate grievance level may be waived by written agreement of the parties.

Section 5. Incorporation by Reference. (1) "Grievance Form", revised 7/2008 (05/2004) is incorporated by reference.

(2) This manual may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capital Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 cannot 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capital Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the central and equivalent staff governing employee grievances and complaints.

(b) The necessity of this administrative regulation: This administrative regulation establishes the grievance procedure requirements for employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalent staff relating to employee grievances and complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the regulation: This regulation provides the proper procedures for filing employee grievances and complaints for certified and equivalent employees.

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

(a) How this amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, (4) prohibit use of state time or resources to file a grievance, (5) permit passage of level of management when appropriate and (6) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization and update grievance procedures.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization and ensures proper grievance procedures.

(d) How the amendment will assist in the effective administration of the statute: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations or government bodies affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Offices of Career and Technical Education. Administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Agency staff shall adhere to requirements and procedures for filing and processing grievances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistent in the grievance procedure.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

(d) 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 regulation, as amended, shall not increase any fees or funding.

(e) State whether or not this administrative regulation established any fees directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(F) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035 (3)(d), 151B.055, 151B.055

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? No revenue shall 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 shall be generated.

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:
Section 10. If an employee does not hold a valid certificate, does not complete the requirements for renewal, or does not complete the appropriate continuing education requirements, his employment shall be terminated. The Executive Director [commissioner] may make an exception if the requirements are not met due to personal illness or other just cause beyond the control of the employee. The employee may be granted one (1) year in which to obtain the requirement.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, of their intention 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 March 2, 2009. Send written notification of intent to attend at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the certified and equivalent staff governing certification and professional development requirements.
(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements for certification and professional development for certified and equivalent employees.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalent staff relating to certification and professional development.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for certification and professional development requirements for certified and equivalent employees.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) Whether this amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statute: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.
(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 take to comply with this administrative regulation or amendments: The Area Technology Centers and Offices of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(5) Provide an estimate of how much it will cost the administrative agency to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 151B.035
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much 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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 3:150. Staff development and In-service.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adult] and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035 related to programs to improve work effectiveness of employees.

Section 1. In-service and staff development activities shall be provided in all schools as specified in the school calendars and scheduled in advance. The [Such] programs shall be designed to improve the work effectiveness of employees.

Section 2. Attendance shall be [is] required for all faculty and administrators at the designated in-services. Unless the supervisor has given prior approval due to extenuating circumstances, an employee [employees] not in attendance shall be placed on leave without pay.

Section 3. In-service and staff development activities shall be developed cooperatively with the faculty and the administration and shall be evaluated on an annual basis.

Section 4. Central office certified and equivalent employees shall be provided staff development programs. Scheduled in-service workshops or staff development activities shall be planned cooperatively by the administrators and professional employees. All events shall be announced in advance.

Section 5. Certified and equivalent employees shall have the right to join professional organizations for their professional improvement. Dues and related costs shall be the responsibility of the individual teacher. Two (2) professional days shall be provided certified and equivalent employees to participate in professional organization meetings without loss of pay or official leave. However, these [such] days shall be requested in advance and not compromise the efficient operation of the school or programs. Participating in professional meetings beyond the two (2) days will generally require the employee to be on official leave.

Section 6. The Executive Director or his [commissioner or] designee may approve certified and equivalent employees to assume regional, state, or national leadership roles in professional organizations for the purposes of additional days on work status. These requests shall [requested must] be made in advance. The maximum number of days shall not exceed fifteen (15) paid days and shall be handled on a case-by-case basis. The skills and leadership to be developed by the employee shall be considered of value to the organization before [such] approval is granted.

Section 7. Travel reimbursement for an employee participating in staff development or a continuing education activity [activities] provided by a professional organization shall be considered on a case-by-case situation. The Executive Director or his [commissioner or] designee shall communicate the administrative policy prior to the event [such events]. It is the responsibility of the employee to receive prior approval when requesting travel reimbursement. Travel reimbursement shall be in compliance with state travel administrative regulations.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does. This regulation Designates the responsibility for promulgation of regulations for the certified and equivalent staff governing staff development and in-service.
(b) The necessity of this administrative regulation: This administrative regulation outlines the requirements, information, and processes for developing staff development and in-service activities, attendance of same, joining professional groups, participating in leadership roles of professional organizations, and related travel.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for certified and equivalent staff regarding staff development and in-service.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for certified and equivalent staff relating to staff development and in-service.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide flexibility of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative per-
sonnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(d) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) Rate whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be affected by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 151B.035

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

(a) How much 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 shall 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 shall be generated.

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

(d) How much will it cost to administer this program for subsequent years? There shall be 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.
sible for promulgation of regulations for certified and equivalent staff relating to local school district service credit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the responsibility for promulgating regulations governing certified and equivalent staff relating to local school district service credit.

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

(a) How the amendment will change the existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization and related supporting documentation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local government entities affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall ensure that accrued sick leave is accurately transferred and proper credit given for years of experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and statutes.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, shall not generate any new or additional costs.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

(a) How much 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 shall 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 shall be generated.

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

Amendment

STATUTORY AUTHORITY: KRS 151B.025(3), (6), 151B.145[,-EO 2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.145 accepts the federal laws relating to career and technical [vocational] education. 20 U.S.C. 2381 through 2415 establishes the general provisions for national and federal workforce and technical education activities. KRS 151B.150 [EO 2000-990] authorizes the Executive Director of the Office of Career and Technical Education [commissioner] to implement the federal programs accepted by KRS 151B.145 and to promulgate necessary administrative regulations KRS 151B.025(3) and (6) establishes program standard responsibilities for state-operated secondary career and technical education [vocational-technical] programs. This administrative regulation establishes the broad, general standards for all career and technical [vocational-technical] education programs to qualify for federal funding.

Section 1. Career and technical [Vocational-technical] education programs shall be designed to serve secondary students. Instructional programs shall not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability.

Section 2. Career and technical education [Vocational-technical] instruction shall be provided within the following program areas: agriculture, business and office technology, health and personal services, home economics, industrial technology education, marketing, vocational-technical education, special career and technical education [vocational-technical] programs, and other program areas designed to meet emerging technologies and the needs of business and industry.

Section 3. The instruction shall be designed to accomplish one
Section 4. The content of instruction in career and technical [vocational-technical] education programs shall:

(1) Be based on a sound understanding of the skills, attitude, and knowledge required to achieve the objectives of instruction and include a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve objectives;

(2) Be developed and conducted in consultation with potential employers and other individuals having skills and substantive knowledge of the occupation or the occupational fields included in instruction;

(3) Include the most up-to-date technology and skills necessary for competencies required to meet the objectives of instruction; and

(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to achieve the objectives of instruction.

Section 5. The career and technical education [vocational-technical] program of instruction shall coordinate classroom instruction with field, laboratory, cooperative work, or other work-based experience which:

(1) Is appropriate to the objectives of instruction;

(2) Is of sufficient duration to develop competencies necessary for the student to achieve those objectives; and

(3) Is supervised, directed, or coordinated by persons qualified as determined by the executive director [State Board for Adult and Technical Education] in cooperation with the Kentucky Board of Education.

Section 6. Recognized career and technical education [vocational-technical] student organizations and leadership activities shall be an integral part of the instructional program and shall be supervised by qualified career and technical [vocational] education personnel.

Section 7. Each program shall have an active advisory committee, as required by 780 KAR 2:030, Section 4.

Section 8. Assessment of the career and technical [vocational-technical] education programs shall be conducted in accordance with requirements and instruments approved by the Office of Career and [Department for] Technical Education. The Executive Director [Commissioner] for the Office of Career and [Department for] Technical Education shall designate the records and reports to be kept by local educational agencies operating approved career and technical [vocational-technical] education programs. Staff from the Office of Career and [Department for] Technical Education or the Department of Education shall make periodic evaluation visits for program improvement purposes.

Section 9. If applicable, all career and technical [vocational-technical] education programs shall operate according to guidelines developed by state or national licensure, certification, and registration agencies having jurisdiction over graduates who seek employment in occupations governed by those agencies.

Section 10. The facilities for any career and technical [vocational-technical] education program shall be of adequate size and designed to accommodate the activities and number of work stations unique to each program. Classrooms, libraries, laboratories, and other facilities, including instructional equipment, supplies, teaching aids, and other materials, shall be provided in quantity and quality to meet the objectives in the career and technical education program. Facilities and equipment shall be approved by the Executive Director [Commissioner] for the Office of Career and [Department for] Technical Education in cooperation with the Commissioner for the Department of Education or designee.

Section 11. Programs offered by any eligible recipient of federal funds shall be discontinued if program requirements are not met or provisions of the Kentucky State Plan for Career and Technical [Vocational-Technical] Education are not met.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FEB 20 WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10: a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capital Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 540-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation accepts the federal laws relating to career and technical education, establishes provision for receipt of same, authorizes the implementation of related federal programs and establishes the responsibility and authority to promulgate necessary administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation establishes the broad, general standards for career and technical education programs to qualify for federal funding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for the operation and management of its schools and programs and to meet all required federal and state standards.

(d) How this administrative regulation currently assists or will assist in the enforcement of the statutes: This regulation sets forth the requirements for general standards of operation of the state-operated secondary career and technical education programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and...
shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: Amendments will accurately reflect the individual and agency responsible for operation of the state-operated secondary area technology centers and ensuring compliance with federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, instructors and current and prospective students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Correct documentation will be provided for students and personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entity identified in question (3): The title changes shall provide an accurate reflection of the Cabinet’s reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (3), (6); 151B.145, 151B.150, 20 U.S.C. 2391-2415; 780 KAR 2.030, Section 4;

4. The effect of this administrative 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 shall 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 shall be generated.

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(AMENDMENT)

780 KAR 4:030. Standards for secondary programs.

RELATES TO, KRS 151B.025
STATUTORY AUTHORITY: KRS 151B.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025 establishes responsibilities for career and technical education, secondary vocational-technical program standards. This administrative regulation cites those standards to be used.

Section 1. Kentucky TECH schools with secondary programs shall operate in compliance with program standards established by the State Board for Elementary and Secondary Education in 705 KAR 4 221.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation accepts the federal laws relating to career and technical education, establishes provision for receipt of same, authorizes the implementation of related federal programs and establishes the responsibility and authority to promulgate necessary administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation establishes the broad, general standards for career and technical education programs to qualify for federal funding.

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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 Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035, 151B.030, 20 U.S.C. 2391-2415; 780 KAR 2:030, Section 4;
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much 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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Admission)

780 KAR 6:005. Unclassified service administrative regulation.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State-Board for Adult] and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035[1]. KRS 151B.035[1] requires the executive director [State-Board] to promulgate comprehensive administrative regulations for the unclassified staff governing programs to improve the work effectiveness of employees and to provide for the safety, health and welfare of employees covered by KRS Chapter 151B. This administrative regulation establishes requirements relating to unclassified staff.

Section 1. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:
(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public;
(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.
(2) Examples of prohibited workplace violence shall include:
(a) Threats of harm;
(b) Brandishing or displaying a weapon or an object that resembles a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens
or intimidates them;
(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;
(d) Stealing as defined by KRS 508.130;
(e) Slinking, slapping or otherwise physically attacking another person;
(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or a member of the general public, or threatens or intimidates a state employee or a member of the general public.
(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 2. Kentucky Employee Assistance Program (KEAP).
(1) Establishment of Kentucky Employee Assistance Program. Pursuant to 101 KAR 2:160 the Personnel Cabinet has established and administers through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services.
(2) An employee in the unclassified service covered by KRS Chapter 151B may participate in the Kentucky Employee Assistance Program as established in 101 KAR 2:160.

Section 3. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th days of each month.
(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.
(3) If the regularly scheduled pay date falls on a state designated holiday, a paycheck shall be issued on the workday preceding the holiday.

Section 4. Workers’ Compensation Fund and Program. An employee in the unclassified service shall be covered under the Self-insured Worker’s Compensation Fund and Program established by KRS 18A.375 and 101 KAR 2.140.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify the administrative regulation office in writing no later than February 20, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capital Plaza Tower, 20th Floor, Frankfort, Kentucky 40601; phone (502) 564-3022, fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation gives the Executive Director authority to establish a administrative regulations for unclassified staff in the Office of Career and Technical Education.
(b) The necessity of this administrative regulation: This regulation establishes guidelines for the unclassified staff governing programs to improve the work effectiveness and provide for the safety, health and welfare of employees covered by KRS Chapter 151B.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulations establishes requirements for unclassified staff relating to the safety, health and welfare of employees covered by KRS Chapter 151B, including the Workplace Violence Policy, use of KEAP and issuance of paychecks.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to implementing administrative regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to accurately reflect the name of the state agency, correct reflect personnel titles, and conform to requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (3) provides that the Executive Director of the Office of Career and Technical Education is responsible for the promulgation of administrative regulations relating to governing programs for the unclassified staff.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and the unclassified employees.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the Implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)?
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The title changes shall provide an accurate reflection of the Cabinet’s reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035 (3); Chapter 151B, 508.190; 101 KAR 2:160; KRS 18A.375 and 101 KAR 2:140

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 shall 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 shall be generated.
   (c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
   (d) How much will it cost to administer this program for subsequent years? There shall be 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.

Section 2. Interpretation of Class Specifications. (1) Class specifications shall be [are] descriptive and explanatory. They shall be [are] designed to indicate the kinds of positions which shall [should] be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

(2) Characteristics of a class shall be [are] general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities shall not [are not to be] construed as describing what the duties or responsibilities of any position shall be and shall not [are not to be] construed as limiting the executive director's (Commissioner's) ability to take, add to, or otherwise alter the duties and responsibilities of a position. The use of an individual expression or illustration as to duties or responsibilities shall be regarded as exclusive assignments of others not mentioned which are of similar kind or quality.

(4) Minimum requirements shall be [are] comprehensive statements of the minimum background as to education, experience, and other qualifications which shall [will] be required in all cases as evidence of an appointee's ability to perform the work properly.

Section 3. Official Copy of Class Specifications. (1) The Office of Career [Department for Adult] and Technical Education shall maintain a master set for all approved class specifications. These [such] specifications shall constitute the official class specifications for the classification plan. The copies of the specification of each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The Office of Career [Department for Adult] and Technical Education shall provide class specifications for inspection to any employee or the public under reasonable conditions during regular business hours.

(3) Title of position. The title of the job classification to which a position has been allocated shall be used to designate that [such] position in all payroll and other official records, documents, vouchers, and communications in connection with personnel processes. For purposes of internal administration or for any other purpose, not involving the personnel processes, any office title, abbreviation or code symbol may be used in lieu of the class title.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. All persons interested in being heard at the hearing shall notify the agency in writing no later than February 17, 2009, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation gives the Executive Director authority to establish a classification plan for unclassified employees in the Office of Career and Tech-
nical Education.
(b) The necessity of this administrative regulation: This regulation is necessary to establish criteria to assure continuity in the classifications relating to interpretation of class specifications, requirements, titles, class specifications, job duties, and characteristics of the class for the unclassified employee.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education as responsible for promulgating administrative regulations necessary to govern the classification plan for unclassified service.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to the classification plan.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel titles, and (3) conform to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (3) provides that the Executive Director of the Office of Career and Technical Education is responsible for the promulgation of administrative regulations relating to a classification plan for unclassified staff.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified employees.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to unclassified employees.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B 035
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much 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 shall not 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? Revenue shall not be generated.
(c) How much will it cost to administer this program for the first full year? There shall not be any cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall not be any cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Change)


RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adult and Technical] Education and the Secretary of the Finance and Administrative Cabinet a pay plan for all [federalized] employees in the unclassified service taking into account but limited to [several] factors such as:
(1) The relative levels of duties and responsibilities of various classes of positions;
(2) Rates paid for comparable positions elsewhere; and
(3) The State's financial resources.

The [State] pay shall become effective upon approval by the Governor after submission by the executive director [executive director-
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation requires the Executive Director of the Office of Career and Technical Education to promulgate administrative regulations which will govern the pay plan for unclassified employees.

(b) The necessity of this administrative regulation: This regulation is necessary to establish criteria for developing salary schedules, and for salary placement of new employees, salary adjustments or promotions, rank changes, demotions, and salary advancements for unclassified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating administrative regulations relating to the pay plan for unclassified employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified employees relating to pay plan.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the size of the state agency; (2) correctly reflect personnel titles; (3) delete a statement indicating that the administrative regulation increases, and (4) conform to requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 provides that the Executive Director of the Office of Career and Technical Education is responsible for the promulgation of administrative regulations relating to a pay plan for all unclassified staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified staff.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to unclassified employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Costs related to the updating of forms, documents and stationery shall be at no or negligible cost, as the forms, documents and stationery...

Section 3. Salary Adjustments. (1) Promotion. A certified or equivalent employee who is promoted to the unclassified service may receive a five (5) percent salary increase at the time of promotion. If the promotion is to a position which constitutes an unusually large increase in the level of responsibility, the executive director (commissioner) may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary. Upon the successful completion of a six (6) month promotional probationary period, an unclassified employee may receive at the discretion of the executive director (commissioner) a five (5) percent promotional increase at the beginning of the month following completion of the probationary period.

(2) Demotion. An unclassified employee in the Office of Career [Department for Adult] and Technical Education who is demoted to another position in the unclassified service shall have his salary adjusted in accordance with the appropriate salary schedule.

(3) Other salary adjustments. (a) The Executive Director for the Office of Career [Commissioner for Adult] and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance in the unclassified service in any fiscal year in which monies are available. (The criteria for such awards shall be approved by the State Board for Adult and Technical Education).

(b) Educational achievement increases will be honored for those employees who have an approved educational achievement award agreement on file in the Division of Personnel Services as of July 1, 1995. This provision will expire when previous commitments have been met.

Section 4. Salary Advancements. (1) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.

(2) Paid overtime. An unclassified employee shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 US 201 et seq.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Meri Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Meri Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.

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are generated via computer template.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees. The administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

(a) How much 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 shall not 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? Revenue shall not be generated.

(c) How much will it cost to administer this program for the first full year? There shall not be any cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There shall not be any cost associated with this amendment.

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

- Revenues (+/-): None
- Expenditures (+/-): None
- Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

(Admission)

780 KAR 5:030. Appointments.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the executive director [State Board for Adult and Technical Education] promulgate administrative regulations for the unclassified service.

Section 1. Establishment and Abolishment of Positions. The appointing authority, or his designee, shall establish and abolish positions consistent with the classification and compensation plan of the unclassified service.

Section 2. Filing Applications. All applications shall be made on forms prescribed by the executive director. Each applicant [commissioner, all applicants] shall be signed and the truth of the statements contained therein certified by signature [such signatures] under penalty of removal for falsification and any [such] criminal penalties as may apply. The executive director [commissioner] may authorize an individual [individuals] to verify work experience and educational attainment of an applicant for any position [applicant, applicants] in the unclassified service. The application shall be consistent with the state and federal equal employment opportunity guidelines.

Section 3. Minimum Qualifications for Filing [File]. A position [All positions] shall be filed by an applicant [applicants] who meets [meet] the standards or requirements prescribed by the executive director [commissioner] with regard to education and experience and [such] other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 4. Selection of Employees. The executive director [commissioner] shall make the selection of employees. An employee in an [Employees in the] executive policymaking position serves [policies serve] at the discretion of the appointing authority and the Governor. The selection and appointment of appropriate personnel shall be contingent upon approval of the secretary of the cabinet and the Governor.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director

1. Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies the Executive Director promulgate comprehensive administrative regulations for the unclassified service.

(b) The necessity of this administrative regulation: This regulation is needed to establish guidelines for developing a system for appointment of unclassified personnel.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating administrative regulations relating to appointment of unclassified personnel.

2. If this is an amendment to an existing administrative regula-
that requires or authorizes the action taken by the administrative regulation. KRS 151B.035
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much 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 shall not 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? Revenue shall not be generated.
(c) How much will it cost to administer this program for the first full year? There shall not be any cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall not be any cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

780 KAR 6:040. Special appointments.

REATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adult] and Technical Education to promulgate administrative regulations consistent with KRS 151B.035, which govern the various types of appointments, and other such administrative regulations not inconsistent with KRS 151B.035 as may be proper and necessary.

Section 1. Detail to Special Duty. When the services of a limited or continuing status employee are needed in the unclassified service, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the executive director [commissioner] contingent upon approval of the secretary of the cabinet and the Governor. For detail to special duty, the executive director [commissioner] may waive the minimum requirements. The employee shall retain status in the certified and equivalent service.

Section 2. Dual Appointments. The executive director [commissioner] may authorize the appointment of an employee [appointments of employees] serving in two (2) positions. The executive director [commissioner] may designate one (1) of the appointments as serving in an acting capacity contingent upon approval of the secretary of the cabinet and the Governor.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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. All comments shall be accepted until March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capital Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 545-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director

1. Provide a brief summary of:
   a. What this administrative regulation does: This regulation requires the Executive Director to promulgate comprehensive administrative regulations which govern various types of appointments, such as Details to Special Duty and Dual Appointments.
   b. The necessity of this administrative regulation: This regulation outlines the process for special appointments for unclassified personnel.
   c. How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating regulations relating to processing special appointments for unclassified personnel.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to special appointments.
   e. If this is an amendment to an existing administrative regulation, provide a brief summary of:
      a. How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel and office titles and approval authority implemented with reorganization and restructuring, and (3) conform to KRS Chapter 13A.
      b. The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization.
      c. How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization.
      d. How the amendment will assist in the effective administration of the statutes: KRS 151B.035 provides that the Executive Director of the Office of Career and Technical Education is responsible for developing procedures and requirements for special appointments for the unclassified employee.
      e. A list of the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified employees.
      f. 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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to unclassified employees.
      g. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
      h. As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes shall provide an accurate reflection of the Cabinet’s reorganization and ensure consistency in all necessary and official documentation and employment practices.
   (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      a. Initially: This regulation, as amended, shall not generate any new or additional costs.
      b. On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
      c. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation and, if so, or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
   (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. Fees shall not be established or increased by these changes, either directly or indirectly.
   (9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
   2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.
   3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035.
   4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
      a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)? Revenue shall not be generated through this amendment.
      b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue shall not be generated through this amendment.
      c. How much will it cost to administer this program for the first full year? There shall not be any cost associated with this amendment.
      d. How much will it cost to administer this program for subsequent years? There shall not be any cost associated with this amendment.
      e. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
         Revenues (+/-): None
         Expenditures (+/-): None
         Other: Explanation: -

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 6:050. Probationary periods.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adult] and Technical Education to promulgate comprehensive administrative regulations consistent with the pro-
visions of KRS 151B.035 which govern personnel rules for the unclassified service in the Office of Career [Department for Adult] and Technical Education. KRS 151B.035 specifies that the state board promulgate comprehensive administrative regulations for the unclassified staff governing probationary periods.

Section 1. All unclassified staff shall serve an initial probationary period of six (6) months. The initial probationary period shall serve as an adjustment period for the newly appointed employee and as an evaluation period for management. Completion of the initial six (6) months of employment shall [does not indicate permanent status. An employee [Employees] may be granted a five (5) percent increase in pay at the completion of the initial six (6) months. An employee who satisfactorily completes the initial probationary period in a given classification shall be eligible for continued employment. An employee who does not satisfactorily complete the initial probationary period shall not be eligible for reemployment in that job classification in the Office of Career [Department for Adult] and Technical Education.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILE WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the person listed below.

CONTACT PERSON: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601. Phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation specifies that the Executive Director of the Office of Career and Technical Education promulgate regulations governing probationary periods for the unclassified service.
(b) The necessity of this administrative regulation: This regulation is necessary to establish guidelines for probationary periods for the unclassified service.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating regulations which govern probationary periods for unclassified service.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to probationary periods.
(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 designates that the Executive Director of the Office of Career and Technical Education shall promulgate regulations governing probationary periods for unclassified service.
(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified personnel.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Unclassified staff shall be provided documentation relating to probationary periods.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) to comply? Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents, and stationery.
(5) Provide an estimate of how much it will cost the administrative agency to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035
4. Estimate the effect of this administrative regulation on the expenditures and revenue of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue

- 1890 -
shall not be generated.

(b) How much revenue will this administrative regulation generate for the area or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue shall not be generated.

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Permanent)

780 KAR 6:02. Attendance, compensatory time and leave for unclassified service.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(1)(l) requires the Executive Director of the Office of Career [State Board for Adult] and Technical Education to promulgate comprehensive administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leaves of absence. The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 to 2654, as implemented by 29 C.F.R. Part 265, requires the granting of Family and Medical Leave. This administrative regulation establishes the attendance, compensatory time and leave requirements for unclassified service staff.

Section 1. Attendance. (1) A full-time employee [employee] shall be required to work thirty-seven and one-half (37 1/2) hours per week unless otherwise specified by the appointing authority or his designee.

(2) The appointing authority or his designee may require employees to work hours and work days other than the normal schedule if it is in the best interest of the agency. An employee shall be given as much advance notice as possible if a schedule is changed.

(3) The employee shall be required to give reasonable notice in advance of absence from a work station.

(4) An employee [Employees] shall be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of his regular work schedule.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

(a) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(b) The maximum amount of compensatory leave that may be earned forward from one (1) pay period to another shall be 200 hours.

(c) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An unclassified employee may use accumulated compensatory time if:

1. Practicable;

2. Requested in advance; and

3. Approved by the respective supervisor.

(b) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation, and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(c) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of 200 compensatory hours.

(3) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the:

1. Regular hourly rate of pay; or

2. Average rate of pay for the final three (3) years of employment.

Section 3. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Annual Leave Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>1 leave day per month; 12 per year</td>
</tr>
<tr>
<td>60-119 months</td>
<td>1 1/4 leave days per month; 15 per year</td>
</tr>
<tr>
<td>120-179 months</td>
<td>1 1/2 leave days per month; 18 per year</td>
</tr>
<tr>
<td>180-239 months</td>
<td>3/4 leave days per month; 21 per year</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>2 leave days per month; 24 per year</td>
</tr>
</tbody>
</table>

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 hours or more regular per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been retired, except as provided in paragraph (f) of this subsection, and who was dismissed for cause from state service shall receive credit for service prior to the dismissal, except if the dismissal resulted from a violation of KRS 151B 090.

(f) An employee, who has retired from a position covered by a state retirement system, who is receiving retirement benefits, and who returns to state service, shall not receive credit for annual months of service prior to retirement.

(g) Part-time, temporary and seasonal employees shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority or his designee up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) If the appointing authority or his designee may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave...
balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(f) Annual leave may be carried forward from one (1) calendar year to the next as provided in this paragraph:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Maximum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-58 months</td>
<td>Thirty (30) workdays</td>
</tr>
<tr>
<td>60-119 months</td>
<td>Thirty-seven (37) workdays</td>
</tr>
<tr>
<td>120-179 months</td>
<td>Forty-five (45) workdays</td>
</tr>
<tr>
<td>180-239 months</td>
<td>Fifty-two (52) workdays</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>Sixty (60) workdays</td>
</tr>
</tbody>
</table>

(g) Leave in excess of the maximum amounts specified in paragraph (f) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(h) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) An employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts established by subsection (2)(f) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) An employee who is laid off shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday shall retain accumulated annual leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, the estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of the accumulated annual leave that does not exceed the amount established by this section be waived, if: 1. The employee resigns, or is laid off because of an approved plan of privatization of the services performed; and 2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 4. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(i) A former employee who is appointed or reemployed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(j) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except if the dismissal resulted from a violation of KRS 151B.090.

(k) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority or his designee shall grant or may require the use of accrued sick leave with pay if an employee: 1. Is unable to work due to medical, dental or optical examination or treatment; 2. Is disabled by illness or injury. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested; 3. Is required to care for or transport a member of the immediate family in need of medical attention for a reasonable period of time. The appointing authority or his designee may require the employee to provide a doctor's statement certifying the employee's need to care for a family member; 4. Would jeopardize the health of the employee or others at the work station because of a contagious disease or demonstration of behavior that might endanger the employee or others; 5. Is lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this paragraph shall be limited to three (3) days; or 6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority or his designee shall return the employee to his former position.

(c) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(d) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(e) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority or his designee shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if: 1. The total continuous leave does not exceed one (1) year; and 2. The employee is unable to perform all accumulated annual, compensatory and sick leave, unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority or his designee shall notify the employee in writing of the leave without pay status.

(c) The appointing authority or his designee may require a periodic doctor's statement during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employer, who does not to allow for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the
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immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority or his designee shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:
1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:
1. Has been on one (1) year continuous sick leave without pay;
2. Has been requested by the appointing authority or his designee in writing to return to work at least ten (10) days prior to the expiration of sick leave;
3. Is unable to return to his former position;
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority or his designee in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or the designee. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority or his designee may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority or his designee shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 5. Family and Medical Leave. (1) An appointing authority or his designee shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2901, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 6. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 7. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and who is registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the time the polls are open, up to a maximum of four (4) hours.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority or his designee may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate to the employee's work and shall [will] benefit the state.

(2) An appointing authority or his designee, with approval of
the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than as specified in this administrative regulation that are of tangible benefit to the state.

(3) The appointing authority or his designee may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation of an allegation of employee misconduct.

(a) The employee shall be notified in writing by the appointing authority or his designee that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(b) If this investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Office of Career and Technical Education (Office) files.

(c) The appointing authority or his designee shall notify the employer, in writing, of the completion of the investigation and the action taken. No information shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned in the interim.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations, and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave have been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange duties whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 2 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor requires the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Eligibility for State-paid Health and Life Insurance Benefits. (1) An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(2) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601. Individuals Interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the unclassified service governing attendance, including hours of work, compensatory time and annual, court, military, sick, voting, Family and Medical Leave, and special leaves of absence.

(b) The necessity of this administrative regulation: This administrative regulation outlines the requirements, information, and process for acquiring leave, use of leave time, and accumulation of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for unclassified employees relating to attendance, compensatory time, and leave time.

(d) How this administrative regulation currently operates or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to atten-
dance, compensatory time, and leave time.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to the administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Unclassified staff shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

9. TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 151B.035; Chapter 337, 29 U.S.C. 210-219, 29 C.F.R. Parts 825; KRS 151B.035(3)(g); Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq., as implemented by 29 C.F.R. Part 825; Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8; KRS 151B.099; Chapter 151B.

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 shall 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 shall be generated.

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other: Explanation

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(AMENDMENT)

780 KAR 6:065. Sick leave sharing procedures for unclassified service.

RELATES TO: KRS 18A.196, 18A.197, 151B.035(14)
STATUTORY AUTHORITY: KRS 151B.035(14)

NEECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State-Board-for-Adult] and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035(14) specifies that the Executive Director [State-Board] shall promulgate comprehensive administrative regulations for the unclassified service staff governing sick leave. This administrative regulation establishes requirements for the Sick Leave Sharing Program.

Section 1. Applicability of Sick Leave Sharing Program. Employees in the unclassified service may participate in the Sick Leave Sharing Program established by KRS 18A.196 and 18A.197 and 101 KAR 2:105 and administered by the Personnel Cabinet.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Merio Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, of their intent to appear. 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 pro-
posed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to be heard to the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street; Capital Plaza Tower, 22nd Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director

(1) Provide a brief summary of:
(a) What administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the unclassified employees governing sick leave sharing.
(b) The necessity of the administrative regulation: This administrative regulation establishes requirements for the sick leave sharing program for unclassified employees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for unclassified employees relating to the sick leave sharing program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the requirements for unclassified employees relating to sick leave sharing.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statute: KRS 151B.035 designates the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These affected include: Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified employees.
(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationary and any other related items reflect the correct titles. Unclassified staff shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question 3: Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: The title changes shall provide an accurate reflection of the Cabinet’s reorganization and ensure consistency in all necessary and official forms, documents and stationary.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035, 18A.196, 18A.197, 151B.035(3)(g); 101 KAR 2 105
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-) None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Instance)

78C KAR 6:070. Records and reports.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adults and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the executive director state board promulgate administrative regulations for the unclassified service in the Office of Career [Department for Adult] and Technical Education.
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Section 1. Records. (1) The Executive Director of the Office of Career (Commissioner of Adult) and Technical Education shall prescribe personnel action forms which shall be used to report personnel actions and status changes. The appointing authority or his designee shall provide a copy of a personnel action form to the employee affected by such action.

(2) The appointing authority or his designee shall maintain a leave record consistent with these administrative regulations for each employee reflecting:
(a) Annual leave earned, used and unused;
(b) Sick leave earned, used and unused;
(c) Compensatory leave earned, used and unused, and
(d) Special leave or any other leave with or without pay. This leave record shall contain documentary evidence to support and justify authorized leave of absence with pay.

(3) Leave balances reported to the Executive Director of the Office of Career (Commissioner of Adult) and Technical Education shall contain the official leave balances of the employee.

(4) The Executive Director of the Office of Career (Commissioner of Adult) and Technical Education shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave, annual leave, and compensatory leave.

Section 2. Reports. (1) The Executive Director of the Office of Career (Commissioner of Adult) and Technical Education shall be responsible for preparing and mailing the report for the generation of all federal and state reports including the reporting of equal employment opportunity and affirmative action.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: January 9, 2009

FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 545-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of comprehensive administrative regulations for the unclassified service in the Office of Career and Technical Education.

(b) The necessity of this administrative regulation: This administrative regulation designates a system of records and reports for the unclassified service in the Office of Career and Technical Education.

(c) How this administrative regulation conforms to the content of the statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for the unclassified services relating to records and documents.

(d) How this administrative regulation assists in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to records and reports.

(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, and (2) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified service.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. The unclassified service shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce In-
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3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 151B 035

4. Evaluate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 full year? There will be no cost associated with this amendment.
   (d) How much will it cost to administer this program for subsequent years? There will be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 6:080. Employee actions.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the executive director [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the executive director [state board] promulgate administrative regulations for the unclassified service staff governing promotion, demotion, transfer, and reemployment.

Section 1. Definition: Work Station. (1) The official work station of an employee assigned to an office is the street address where the office is located.
(2) The official work station of a field employee is that address to which the employee is assigned as of the time of appointment to the employee's position.
(3) Each employee shall be assigned to a work station by the appointing authority or his designee. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided the employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority or his designee notifies the employee in writing prior to the effective date of the action. Nothing within this administrative regulation shall be construed as prohibiting the appointing authority or his designee from assigning an employee to work in a different work station within the county of employment.

Section 2. Promotion. (1) A vacancy [Vacancies] may be filled by promotion whenever practicable and in the best interest of the service.
(2) Any continuing status employee promoted from the certified and equivalent personnel system retains his status in the certified and equivalent system. If at the time of reversion no vacancy exists in the position of the former class, then status [Section 14-1 of HB 814 (1990 RS)] pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to KRS 151B.085(3) [Section 8-1 of HB 814 (1990 RS)].

Section 3. Demotion. (1) An employee may request a voluntary demotion in writing from the appointing authority or his designee. A copy of the request shall be placed in the employee's official file.
(2) The executive director [commissioner] may make an involuntary demotion [demotions] when deemed necessary to further the best interest of the department.

Section 4. Transfer. An employee appointed in accordance with KFS 12.050 cannot be transferred. Any employee in the unclassified service may be transferred from one (1) position to another in the unclassified service by the appointing authority or his designee with written notice. If the transfer is on an involuntary basis, the employee shall receive notice of his transfer. Following notification of an involuntary transfer, an employee shall report for work at the work station to which transferred on the effective date of the transfer. The notice shall be in writing, state the effective date of the transfer, the reason for the employee's selection for transfer, and the employee's obligation to report to the new work station.

Section 5. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority or his designee. A resignation [Resignation] shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 6. Temporary Overlap. The appointing authority or his designee for training purposes may place an employee in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

Section 7. If an employee voluntarily retires, he is considered as separated without prejudice.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 150 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the unclassified service staff governing promotion, demotion, transfer,
reemployment, and work station.

(b) The necessity of this administrative regulation: This administrative regulation establishes the process for unclassified service employee actions relating to promotion, demotion, transfer, reemployment and work station.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for unclassified employees relating to promotion, demotion, transfer, reemployment and work station.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation sets forth the requirements for unclassified staff relating to employee actions.

(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amend to this administrative regulation are necessary to provide continuity of titles relating to reorganization.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified service staff.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery, and any other related items reflect the correct titles. Instructors shall be provided the correct documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: This regulation, as amended, shall not generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(c) In the case of funding: This regulation, as amended, shall not generate any new or additional costs.

(d) In the case of implementation and enforcement of this administrative regulation: This regulation, as amended, shall not generate any new or additional costs.

(e) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.

(f) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035, 151B.080(3), 12 050

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

(a) How 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? No revenue shall 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 the first full year? No revenue shall be generated.

(c) How 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? No revenue shall be generated.

(d) How 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 shall be generated.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

780 KAR 6:000. Disciplinary actions.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 151B.035 requires the Executive Director of the Office of Career [State Board for Adult] and Technical Education to promulgate administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the executive director [State Board for Adult and Technical Education] promulgate administrative regulations for the unclassified service governing dismissals, suspensions, and any other disciplinary measures.

Section 1. General Provision. Except as provided by KRS 151B.035, Section 10, an employee [Section 6(6) of HB 814-(1999 R), employees] in the unclassified service shall not have appeal rights to the Kentucky technical Education Personnel Board [State Board for Adult and Technical Education].

Section 2. Dismissals, Demotions and Suspensions. The appointing authority or his designee [commissioner] may make dismissals, demotions and suspensions as required to assure effective and efficient management in the Office of Career [Department for Adult] and Technical Education.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Meri Street, Capitol Plaza Tower, 20th Floor, Conference Rooms, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Meri Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director

1. Provide a brief summary of:
   a. What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the unclassified service governing dismissals, suspension, and any other disciplinary measures.
   b. The necessity of this administrative regulation: This administrative regulation outlines the process by which disciplinary actions are defined and implemented for the unclassified service.
   c. How this administrative regulation conforms to the content of the authorizing statute: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for unclassified service relating to disciplinary actions.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the requirements for unclassified staff relating to disciplinary actions.

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 is necessary to accurately reflect the name of the state agency and associated personnel.
   b. The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
   c. How the amendment conforms to the content of the authorizing statute: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
   d. How the amendment will assist in the effective administration of the statute: KRS 151B.035 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
   e. List the type and number of individual, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified service.
   f. Provide an analysis of how the entities identified in questions (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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Instructors shall be provided the correct documents.
      b. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
      c. As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

3. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   a. Initially: This regulation, as amended, shall not generate any new or additional costs.
   b. On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

4. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

5. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.

6. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

7. TIERING: Is tiering applied? The regulations are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035, 151B.035, Section 10

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

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

5. How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.

6. How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director of the Office of Career (State-Board for Adult) and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the executive director (state-board) promulgate administrative regulations for the unclassified service governing appeals.

Section 1. General Provisions. (1) As provided in KRS 151B.052(10), an employee [Section 6(5) of HB 814 (1990 RS), employees] in the unclassified service may appeal to the Kentucky Technical Education Personnel Board [State-Board for Adult and Technical Education].

(2) An appeal [Appeal] shall be filed within thirty (30) calendar days after receiving notification of the penalization or becoming aware of the penalization through the exercise of due diligence [as specified in KRS Chapter 151B, Section 6(5)]. When the 30th day falls on a day when the office of the secretary of the board is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) The appeal [Appeal] shall be heard in Frankfort, Kentucky or in a location mutually acceptable to the hearing officer and the employee. The hearing officer shall make the final determination of the location of the hearing.

(4) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) Unless otherwise directed by the board, the secretary of the board shall assign a hearing officer or officers to each appeal. If more than one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board through the office of the secretary of the board and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board through the office of the secretary of the board within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted in extraordinary circumstances by the hearing officer.

(4) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justicification and may be granted without strict compliance with the requirements of this section.

(5) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the secretary of the board shall execute and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the secretary and served on all other parties.

(2) Any interim order by the hearing officer shall be executed and transmitted by the secretary of the board to all parties. Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.

(3) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5) Subpoena forms shall be available in the office of the secretary of the board and shall be issued by the secretary of the board. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(6) A deposition [Depositions] may be taken only in extraordinary circumstances and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. Any objections shall be filed prior to the scheduled hearing.

(7) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(8) The hearing officer may schedule a prehearing conference to review the issues, determine which facts, if any, may [be] stipulated, rule on pending motions or requests, and address any other matters which shall [will] facilitate the hearing.

(9) Any agreed settlements shall be submitted in writing for the full board's review and final action.

(10) The secretary of the board, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:
(a) Procedural questions.
(b) Scheduling of hearings.

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing and shall be authorized to require compliance with his rulings.

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure shall [do] not apply.

(4) The hearing officer shall direct one [1] of the parties to present the case first, examine the witnesses and submit documentation, subject to cross examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross examination.

(5) All parties shall provide three [3] copies of any exhibit which is to be introduced as evidence. Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

(6) The proceedings and evidence presented shall be recorded by a court reporter.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the secretary of the board to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the secretary of the board within twenty (20) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered and served on all parties.

(4) Any party may submit a written response to exceptions filed...
with the board. The response shall be filed with the board through the office of the secretary of the board within ten (10) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(3) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

Section 6. Board Review and Action. (1) The board may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate.

(2) Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed, and entered at the direction of the secretary of the board. Copies of the order shall be transmitted to all parties by the secretary of the board.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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. John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 548-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for promulgation of regulations for the unclassified service governing employee appeals and hearings.
(b) The necessity of this administrative regulation: This administrative regulation establishes the appeals and hearing requirements for unclassified service.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgation of regulations for unclassified service relating to appeals and hearings.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for unclassified staff relating to appeals and hearings.
(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: These affected include 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and unclassified service 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) 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 Area Technology Centers and the Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Unclassified service employees shall be provided the correct documents.
(b) In complying with the administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service or requirements of a state or local government (including cities, counties, fire departments, or school districts)?
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035, 151B.055 - Section 10.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue shall 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 shall be generated.

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

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

(Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues (+/-): None Expenditures (+/-): None Other Explanation:)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Proposal)

780 KAR 7:010. Definitions for 780 KAR Chapter 7.

RELATES TO: KRS 151B.025(3), [454B-110.] 151B.150(EO 2000-990)

STATUTORY AUTHORITY: KRS 151B.025(3), [EO 2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025(3) gives the Office of Career and [Department for] Technical Education the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area [vocational-education and] technology centers. This administrative regulation establishes the definitions for 780 KAR Chapter 7.

Section 1. Definitions. (1) "Area technology center" means a school primarily serving secondary students offering academic and occupational programs suitable for fulfilling high school credit requirements and attaining occupational goals and objectives.

(2) "Construction" means construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading, improvement, and architect fees.

(3) "Equipment" means a movable or fixed unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles which:

(a) Retains its original shape and appearance with use;
(b) Is nonexpendable;
(c) Costs $250 or more; and
(d) Does not lose its identity through incorporation into a different or more complex unit or substance.

(4) "Facility maintenance" means maintenance of the facility which includes all equipment and systems considered to be permanently installed as part of the facility.

(5) "Maintenance" means repairing, servicing, or replacing parts of the facility including the permanently installed equipment and systems and appropriate insurance as needed to assure proper protection and adequate and safe operating conditions.

(6) "Operation" means management of the education program offered in the facility and the necessary and ancillary services including the cost of salaries, equipment, supplies, materials, and transportation of students which are involved in the instructional program, and may include other reasonable costs of services and supplies needed in providing janitorial services and replacement of expendable supplies.

(7) "Replacement equipment" means those equipment items purchased to replace items that already exist in career and technology [vocational-technical] program.

(8) "Supplies" means an article or material which meets one (1) or more of the following conditions:

(a) Is consumed in use;
(b) Loses its original shape or appearance with use;
(c) Is expendable;
(d) Costs less than $250; or
(e) Loses its identity through incorporation into a different or more complex unit or substance.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 23rd Floor, Conference Room, Frankfort, Kentucky 40601. Interested persons are invited to attend this hearing on or before the date specified. Persons interested in being heard shall notify this agency in writing no later than February 17, 2009, 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 wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 23rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director
1. Provide a brief summary of:
(a) What this administrative regulation does: This regulation designates the responsibility for administrative functions in relation to the management, control, and operation of state-operated secondary area technology centers.
(b) The necessity of this administrative regulation: This administrative regulation establishes the definitions for 780 KAR Chapter 7.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Office of Career and Technical Education responsible for all administrative functions in relation to the management, control and operation of state-operated secondary area technology centers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth definitions relating to 780 KAR Chapter 7.
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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 and shall correct the changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for administrative functions for the state-operated secondary area technology centers and establishes guidelines for compliance.
3. List the type and number of individuals, businesses, organizations, and state or local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and all employees.
4. Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and the Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Employees shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(i) The regulation, as amended, shall not generate any new or additional costs.
(ii) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(e) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(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: This regulation, as amended, shall not increase any fees or funding.
(g) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(h) tiersing: Is tiering applied The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 151B.025 (3); 151B.150; 850 KAR Chapter 7
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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Amendment)

780 KAR 7:020. Area technology center facility standards.

RELATES TO: KRS 151B.025(3), [161B.410], 151B.150, [EO 2000-060]

STATUTORY AUTHORITY: KRS 151B.025(3), [EO 2000-060]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025(3) gives the Office of Career and Department for Technical Education the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. This administrative regulation establishes facility standards for an area technology center.

Section 1. An area technology center shall meet the following standards:

(1) The facility shall be used principally for providing career and technical education to secondary students who are available for study in preparation for entering the labor market.
(2) The facility shall provide the technical [vocational] preparation component of the educational program for secondary students.
(3) The facility shall provide for occupational preparation programs and the appropriate related instruction. The types of programs and related instruction to be offered shall be approved by the Executive Director of the Office of Career and [Commissioner] Technical Education and in compliance with administrative regulations for secondary students established by the Kentucky Board of Education in 705 KAR 4:231.

Section 2. Each career and [vocational]-technical education program offered in the facility shall meet the minimum state requirements for teachers, curriculum, and equipment.

Section 3. The area technology center may be available, on a need basis, to offer programs for postsecondary students.

Section 4. The area technology center shall have sufficient land for building, expansion, and parking.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 566-2241.
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes facility standards for an area technology center.
(b) The necessity of this administrative regulation: This administrative regulation defines the standards for an area technology center.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for all administrative functions in relation to the management, control and operation of state-operated secondary area technology centers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth facility standards for area technology centers.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for administrative functions for the state-operated secondary area technology centers and establishes guidelines for compliance.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, all employees, and current and prospective students.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and the Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Employees shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet’s reorganization and ensure consistency in all necessary and official forms, documents and stationery.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(i) Initially: This regulation, as amended, shall not generate any new or additional costs.
(ii) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? The amended text is applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (3); 151B.150; 705 KAR 4 231
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 shall 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 shall be generated.
(c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
(d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): None
Expenditures (+/-): None
Other: Explanation

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education

(AMENDMENT)

780 KAR 7:040. Facility maintenance.

RELATES TO: KRS 151B.025(3), 151B.150; EO-2009-990
STATUTORY AUTHORITY: KRS 151B.025(3); EO-2009-990
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B 025(3) gives the Office of Career and [Department-fac] Technical Education the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area [vocational-education-technical] technology centers. This administrative regulation establishes requirements for the maintenance of state-operated secondary area technology centers [vocational-technical-education facilities].

Section 1. An area technology center owned by a local board of education shall:
(1) Be maintained in accordance with 705 KAR 3:141; and
(2) Spend at a minimum the share of funds awarded to the local board through the SEEK funds earmarked in the Kentucky Department of Education's budget for the operation of state-operated secondary area technology centers [vocational-technical] programs in state-operated facilities.
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 564-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Marks, Executive Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes requirements for the maintenance of area technology education facilities.
   (b) The necessity of this administrative regulation: This administrative regulation designates maintenance compliance with 705 KAR 3.141 and use of the SEEK funds.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for all administrative functions of the state-operated area technology centers.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for area technology centers relating to maintenance.
   (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 is necessary to (1) accurately reflect the content of the state agency and associated personnel, (2) delete references to old executive orders, and (3) conform to the requirements of KRS Chapter 13A.
   (b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
   (c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and shall correct title changes implemented with reorganization.
   (d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for operations for the state-operated secondary area technology centers and establishes guidelines for compliance.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, all employees and current and projected students.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and the Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Costs shall be at no or negligible cost.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.
      (d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
         (a) Initially: This regulation, as amended, shall not generate any new or additional costs.
         (b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.
      (d) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.
      (e) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment:
         (a) This regulation, as amended, shall not increase any fees or funding.
         (b) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation shall not establish any fees, either directly or indirectly.
      (f) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.
3. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation: KRS 151B.025 (3); 151B.150; 705 KAR 3.141
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 shall 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 shall be generated.
   (c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
   (d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

- 1906 -
EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education
(Proposal)

780 KAR 7:000. Equipment Inventory.

RELATES TO: KRS 45.301(1)[f], 151B.025(3), [461B.110],
151B.150[, EO-2000-999]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45
301(1)[f] requires the Finance and Administration Cabinet to
supervise purchasing and storekeeping and control of property and
stocks. KRS 151B.025[3, EO-2000-999] requires the Executive Di-
rector of the Office of Career and [Commissioner of the Depart-
ment—fed] Technical Education to administer the state-operated
career and [vocational-technical education programs. This adminis-
trative regulation establishes procedures relative to the inventory of state-operated career and [vocational-technical education equipment.

Section 1. (1) The Office of Administrative Services shall be
responsible for the management and control of an inventory sys-
tem for vocational-technical education programs.

(2) The regulation requires that all equipment with a value of $250 or more acquired in
whole or in part with state funds shall be maintained on this inven-
tory and identified in accordance with 200 KAR 5.021.

(3) The area technology centers shall be responsible for con-
ducting an annual inventory of all property.

(4) All equipment acquired in whole or in part with federal funds shall be maintained on the current inventory.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH LRC: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
February 24, 2009 at 10 a.m. at the offices of the Education and
Workforce Development Cabinet, 500 Mero Street, Capitol Plaza
Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this
agency in writing no later than February 1, 2009, 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 pro-
posed administrative regulation. Written comments shall be ac-
ccepted until March 2, 2009. 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: JOHN MARKS, Executive Director,
Office of Career and Technical Education, 500 Mero Street, Capital Plaza
Tower, 20th Floor, Frankfort, Kentucky 40601, phone (502) 564-
3022, fax (502) 565-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: JOHN MARKS, Executive Director
(1) Provide a brief summary of:
(a) What administrative regulation does: This adminis-
trative regulation establishes policy and operating procedures relative to
the inventory of career and technical education equipment.
(b) The necessity of this administrative regulation: This adminis-
trative regulation designates the responsibility for maintaining
inventory, what to inventory, and how often.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: KRS 151B.025 designates the Executive Di-
rector of the Office of Career and Technical Education responsi-
ble for policy and operating procedures relative to the inventory of
career and technical education programs.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regulation
sets forth the requirements for equipment inventory.
(e) 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 amendment is necessary to (1) accurately reflect
the name of the state agency and associated personnel, (2) cite
the appropriate statutory provisions, (3) delete references to old
executive orders, and (4) conform to the requirements of KRS
Chapter 13A.
(b) The necessity of the amendment to this administrative
regulation: Amendments to this administrative regulation are ne-
cessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the author-
izing statutes: This amendment complies with KRS 151B.025 and
shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administra-
tion of the statutes: KRS 151B.025 designates that the Office of
Career and Technical Education is responsible for administrative
functions for the state-operated secondary area technology centers
and establishes guidelines for compliance.
(2) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Those affected include: 55 Area Technology Cen-
ters, Office of Career and Technical Education administrative per-
sonnel, all employees, and current and prospective students.
(3) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive 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 Area Technology Centers and the
Office of Career and Technical Education administrative personnel
shall assure that documents, stationary, and any other related items
reflect the correct titles. Employees and students shall be provided
the correct documents.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question
(3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The title changes shall provide an
accurate reflection of the Cabinet's reorganization and ensure
consistency in all necessary and official forms, documents and
stationery.
(4) Provide an estimate of how much it will cost the adminis-
trative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate
any new or additional costs.
(b) On a continuing basis: This regulation, as amended, shall
not generate any new or additional costs.
(5) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation? This
regulation, as amended, shall not generate any new or additional
costs.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if now or by the change if it is an amendment: This regulation,
as amended, shall not increase any fees or funding.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees. This
administrative regulation shall not establish any fees, either directly
or indirectly.
TIERING: Is tiering applied? The amendments are applied
uniformly and tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
(including cities, counties, fire departments, or school districts) will
be impacted by this administrative regulation? The Education
and
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

Workforce Development Cabinet, Department for Workforce Investment, and the Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025(9); 45.301(1)(f); 151B.150; 200 KAR 5.02.

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 shall 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 shall be generated.
   (c) How much will it cost to administer this program for the first full year? There shall be no cost associated with this amendment.
   (d) How much will it cost to administer this program for subsequent years? There shall be no cost associated with this amendment.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education (Amendment)

780 KAR 7:070. Equipment Insurance.

RELATES TO: KRS 151B.110, 151B.150
STATUTORY AUTHORITY: KRS 56.070-56.180, [461B+49a]
151B.150
NECESSITY, FUNCTION, AND CONFORMITY: To establish operating procedures relative to equipment insurance.

Section 1. All career and [vocational]-technical education equipment in the Kentucky TECH schools shall be covered by the State Fire and Tornado Insurance Fund regular policy underwritten by the Commonwealth of Kentucky except:
(1) Equipment insured for full coverage under the state computer insurance policy.
(2) Equipment normally utilized and stationed at remote locations shall be insured under the floater clause in the Fire and Tornado Insurance Fund.
(3) Equipment on loan from industry requiring insurance shall be insured under the Inland Marine policy underwritten by the Commonwealth of Kentucky.

JOHN MARKS, Executive Director
APPROVED BY AGENCY: January 9, 2009
FILED WITH AGENCY: January 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than February 17, 2009, 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 March 2, 2009. 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: John Marks, Executive Director, Office of Career and Technical Education, 500 Mero Street, Capitol Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marks, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes operating procedures relative to equipment insurance.
(b) The necessity of this administrative regulation: This administrative regulation outlines the insurance cover for equipment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Executive Director of the Office of Career and Technical Education responsible for governing state-operated area technology centers, this regulation establishes operating procedures relative to the equipment insurance.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for equipment insurance.

(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 is necessary to (1) accurately reflect the name of the state agency and associated personnel, (2) cite the appropriate statutory provisions, and (3) conform to the requirements of KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 and shall correct title changes implemented with reorganization.
(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 designates that the Office of Career and Technical Education is responsible for administrative functions for the state-operated secondary area technology centers, this regulation establishes operating procedures relative to the equipment insurance.

(3) List the types and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation. Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, all employees, and current and prospective students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The Area Technology Centers and the Office of Career and Technical Education administrative personnel shall assure that documents, stationery and any other related items reflect the correct titles. Employees and students shall be provided the correct documents.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This regulation, as amended, shall not generate any new or additional costs.
These labor standards cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements.

Section 1. Definitions. [As used in these administrative regulations various的情形 may require or otherwise:
(1) "Apprentice" means a person at least 16 (sixteen) years of age who has entered into an apprenticeship agreement with an employer or an association of employers or an organization of employees;
(2) "Apprenticeship agreement" means a voluntary written agreement entered into by the apprentice or through his parent or guardian with an employer, or an apprenticeship and training committee acting as agent for an employer, which agreement contains the terms and conditions of the employment and training of the apprentice to enable the apprentice to learn the trade, craft or business of the employer;
(3) "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including such matters as the requirement for a written apprenticeship agreement;
(4) "Bureau" means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor;
(5) "Council" means apprenticeship and training council;
(6) "Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice;
(7) "Executive director" means the Executive Director of Workplace Standards, Labor Department, or any authorized person to act in his behalf, having jurisdiction over laws or administrative regulations governing wages and hours of employees working in this state;
(8) "Joint apprenticeship committee" means a committee composed of an equal number of representatives of employers and employees, which has been established by an employer or group of employers and a bona fide collective bargaining agent or agents to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices selected for employment under the particular program;
(9) "Nonjoint apprenticeship sponsor" means an apprenticeship program sponsor in which a bona fide collective bargaining agent does not participate; it includes an individual nonjoint sponsor (apprenticeship program sponsored by one (1) employer without the participation of a union) and a group nonjoint sponsor (apprenticeship program sponsored by two (2) or more employers without the participation of a union);
(10) "Registration of an apprenticeship program" means the acceptance and recording of such program by the supervisor, as meeting the basic standards and requirements for approval of such program. Approval is evidenced by written indicia;
(11) "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his trade;
(12) "Sponsor" means any person, association, committee, or organization in whose name or title the program is or is to be registered, irrespective of whether such entity is an employer;
(13) "Supervisor" means supervisor of apprenticeship and training.

Section 2. (1) No apprenticeship program shall be eligible for registration unless:
(a) it is in conformity with the requirements of this administrative regulation and the training is in an apprenticeship occupation approved by the Bureau; and
(b) it is in conformity with the regulations on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 C.F.R. Part 30, as amended, and Kentucky law on "Equal Employment Opportunity in Apprenticeship and Training" set forth in KRS Chapter 344.
(2) Approved apprenticeship programs shall be accorded registration, evidenced by a certificate of registration or other written indicia.
(3) Any modification or change to a registered program shall be
promptly submitted to the registration office and, if approved, shall be recorded and acknowledged as an amendment to such program.

(4) The request for registration of an apprenticeship program, together with all documents and data required by this administrative regulation, shall be submitted in three (3) copies.

(5) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument, provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement or "no objection" to the registration is required. Where such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The supervisor shall provide a reasonable time period of not less than thirty (30) days nor more than sixty (60) days for receipt of union comments, if any, before final action on the approval.

(6) Where the employees to be trained have no collective bargaining agent, an apprenticeship program may be proposed for registration by an employer or group of employers.

Section 3. The following standards are prescribed for an apprenticeship program:

(a) A program must be an organized, written plan embodying the terms and conditions of qualification, recruitment, selection, employment, training, and supervision of one (1) or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(b) The standards must contain the equal opportunity pledge prescribed in the Kentucky State Plan for equal employment opportunity in apprenticeship and, when applicable, an affirmative action plan and a selection method in accordance with the Kentucky State Plan for equal employment opportunity in apprenticeship, and provisions concerning the following:

- Employment and training of the apprentice in a skilled trade;
- A term of apprenticeship, not less than 2,000 hours of work experience, consistent with training requirements as established by industry practices;
- An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;
- Provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of 144 hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial, or correspondence courses of equivalent value, or other forms of approved self-study;
- A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and whether the required school time shall be compensated. The entry wage shall not be less than forty (40) percent of the established journeyman rate or not less than the minimum wage prescribed by federal or state law, whichever is greater. On projects where the wage rate has been established by law, the apprentice's rate of pay shall be based upon the established journeyman rate;
- The ratio of apprentices to journeymen consistent with proper supervision, training, and continuity of employment, and applicable provisions in collective bargaining agreements, but in a ratio of not more than one (1) apprentice for the first journeyman, and one (1) apprentice for each additional three (3) journeymen; unless approval is granted by the supervisor in cooperation with the executive director and Apprenticeship and Training Council;
- A probationary period of not more than four (4) months during which the apprenticeship agreement may be terminated by either party, with full credit for such period toward completion of apprenticeship;
- Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;
- Grant of advance standing or credit for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any acceded progression step;
- Transfer of employer's training obligation to another employer, where warranted, with full credit to apprentice for satisfactory time and training earned;
- Assurance of qualified training personnel;
- The placement of an apprentice under an apprenticeship agreement as required by the state apprenticeship law and administrative regulations. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;
- The required minimum qualifications for persons entering an apprenticeship program, with an eligible starting age to be not less than sixteen (16) years;
- Recognition for successful completion of apprenticeship evidenced by an appropriate certificate;
- Identification of the registration agency;
- Name and address of the appropriate authority under the program to receive, process and make disposition of complaints;
- Recording and maintenance of all records concerning apprenticeship as may be required by the state apprenticeship agency or other applicable law.

(b) A statement that no controversies or differences concerning the apprenticeship agreement which cannot be adjusted by the parties to be submitted to the supervisor for determination as required by law.

Section 4. The apprenticeship agreement shall contain explicitly:

(a) Names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor;

(b) The date of birth of apprentice;

(c) Name and address of the program sponsor and registration agency;

(d) A statement of the trade, craft or business in which the apprentice is to be trained, and the beginning date and term of apprenticeship;

(e) A statement showing the number of hours to be spent by the apprentice in work on the job, and the number of hours to be spent in related and supplemental instruction;

(f) A statement setting forth a schedule of the work processes in the trade or industry division in which the apprentice is to be trained and the approximate time to be spent in each process;

(g) A statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time shall be compensated;

(h) A statement providing for a period of probation of not more than four (4) months during which the apprenticeship agreement may be terminated by either party to the agreement upon written notice to the registration agency, and that after the probationary period, the agreement may be suspended, cancelled, or terminated by the supervisor by mutual agreement of the parties, or by the supervisor for good and sufficient reason, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the sponsor of the final action taken;

(i) A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

(j) A statement that the apprenticeship will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, sex or age (between forty (40) and sixty-five (65)).

Section 5. Deregistration of a program may be initiated upon the voluntary action of the sponsor by request for cancellation of the registration, or upon a finding of good and sufficient reason by the supervisor instituting formal deregistration proceedings in ac-
cordance with the provisions of this section.

(1) Request by sponsor. The supervisor may cancel the registration of an apprenticeship program for good and sufficient reason by written acknowledgment, of such request stating, but not limited to, the following matters:

(a) The registration is cancelled at sponsor's request, the reason therefor, and effective date thereof;

(b) That, within fifteen (15) days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation the reason thereof, and the effective date; that such cancellation automatically deprives the apprentice of his/her individual registration; and that the deregistration of the program removes the apprentice from coverage for state and federal purposes.

(2) Formal deregistration. Deregistration procedures may be undertaken when the apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions or the requirements of this administrative regulation, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions in the Kentucky State Plan for equal employment opportunity in apprenticeship:

(a) Where it appears the program is not being operated in accordance with the registered standards or this administrative regulation, the supervisor shall so notify the program sponsor in writing. The notice shall be sent by certified mail, with return receipt requested. The notice shall state the violations and the remedy required, and that a determination of reasonable cause for deregistration will be made unless correction is effectuated within fifteen (15) days. Upon request by the sponsor for good cause, the fifteen (15) day term may be extended by the supervisor. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity. If the required correction is not effectuated within the allotted time, the supervisor shall send a notice to the sponsor, by certified mail, return receipt requested, stating the following:

1. The notice is sent pursuant to this section;
2. Certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of such occasions and letters; and that the sponsor has failed or refused to effect correction;
3. Based upon the stated deficiencies and failure of remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within fifteen (15) days of the receipt of this notice, the sponsor requests a hearing.

(b) If a request for a hearing is not made, the supervisor will issue a determination with respect to deregistration of the program;

(c) If the sponsor has not requested a hearing, the supervisor will file his determination with the executive director. This determination shall contain all pertinent facts and circumstances concerning the nonconformity, including the findings and copies of all relevant documents and records;

(d) If no appeal is filed with the executive director within fifteen (15) days of the receipt of the supervisor's determination, the determination of the supervisor shall become final;

(e) If the sponsor requests a hearing, the executive director will convene a hearing after due notice to the parties and shall make a final decision on the basis of the record before him;

(f) Any party to the dispute aggrieved by the order or decision of the executive director may appeal in accordance with KRS 343.070.

Section 6. Any apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multisite basis and are registered pursuant to all requirements of this administrative regulation by any recognized state apprenticeship agency or by the board, shall be accorded registration or approved reciprocity by the supervisor if such reciprocity is requested by the sponsoring entity.

J.R. GRAY, Secretary
APPROVED BY AGENCY: January 8, 2009
FILED WITH LRC: January 12, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009, at 10 a.m. (EDT) at the Kentucky Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dan Walton, Acting Executive Director, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dan Walton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment brings Section 4(10) of the regulation into conformity with 29 C.F.R. Section 29(i), as required by 29 C.F.R. Section 29.12(b)(6).

(b) The necessity of this administrative regulation: This amendment is necessitated by 29 C.F.R. Section 29.12(b)(6), which requires an acceptable state plan for equal opportunity in apprenticeship. This amendment brings the regulation into conformity with 29 C.F.R. Section 29(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment does not impact conformity with the content of authorizing statutes. Rather, it simply provides references to applicable Sections of 29 U.S.C. Section 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment will bring the regulation into conformity with federal law, allowing Kentucky’s apprenticeship program to be recognized by the U.S. Department of Labor.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the references to age in the current version of Section 4(10) of the regulation; it makes no other changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessitated by 29 C.F.R. Section 29.12(b)(5), which requires an acceptable state plan for equal opportunity in apprenticeship. This amendment brings the regulation into conformity with 29 C.F.R. Section 29(i).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment does not impact conformity with the content of authorizing statutes. Rather, it simply deletes references to age in the current version of Section 4(10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation into conformity with federal law, allowing Kentucky’s apprenticeship program to be recognized by the U.S. Department of Labor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employers, employees, and places of employment throughout the Commonwealth covered by KRS 337 are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required on the part of any regulated entity, as the amendment simply deletes the references to age in the current version of Section 4(10).
(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 compliance.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Compliance will bring the regulation into conformity with federal law, allowing Kentucky's apprenticeship program to be recognized by the U.S. Department of Labor.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no initial cost to implement this amendment. There are no new provisions or requirements.
(b) On a continuing basis: There will be no continuing cost to implement this amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source of funding is indicated because the amendment costs nothing to implement.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment neither establishes any fees, nor directly or indirectly increases any fees.
(9) Tiering has been applied? Tiering is not applied. All employers covered by KRS Chapter 337 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 C.F.R. Section 29.12(b)(6).
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment simply brings Section 4(10) of the regulation into conformity with federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment will bring the regulation into conformity with federal law, allowing Kentucky's apprenticeship program to be recognized by the U.S. Department of Labor.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 337.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 29 C.F.R. Section 29.12(b)(6) authorizes this amendment, which simply brings Section 4(10) into conformity with 29 C.F.R. Section 29.60 by deleting references to age.
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? Nothing
(d) How much will it cost to administer this program for subsequent years? Nothing

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:
Revenues (+/-): Unknown
Expenditures (+/-): Unknown
Other explanation: None

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Education and Training
(Amendment)


RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. Parts 1915, 1917, 1918, 1919
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. EQ 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes maritime employment standards to be enforced by the Office of Occupational Safety and Health in the maritime industry.

Section 1. Definitions. (1) "Administrator" means the Kentucky Labor Cabinet or Department of Workplace Standards (Office of Occupational Safety and Health, Frankfort, Kentucky).
(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet (Commissioner of Labor, Kentucky Department of Labor or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor).
(3) "C.F.R." means Code of Federal Regulations
(4) "Employee" is defined in KRS 338.015(2)
(5) "Employer" is defined in KRS 338.015(1).
(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet (Kentucky Department of Labor or U.S. Department of Labor).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:
(1) 29 C.F.R. Part 1915, revised July 1, 2008[2007], relating to occupational safety and health standards for shipyard employment;
(2) 29 C.F.R. Part 1917, revised July 1, 2008[2007], relating to marina terminals;
(3) 29 C.F.R. Part 1918, revised July 1, 2008[2007], relating to safety and health regulations for longshoring;
(4) 29 C.F.R. Part 1919, revised July 1, 2008[2007], relating to gear certification; and
(5) The amendment to 29 C.F.R. 1917.71 and 1918.6[1916-123, 1917-08, and 1918-10], published in the December 10, 2008[November 15, 2007], Federal Register, Volume 73[72], Number 239[229-(72 Fed Reg 54426)].

JAMES R. GRAY, Chairman
APPROVED BY AGENCY: January 12, 2009
FILED WITH LRC: January 12, 2009 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals in-
interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the maritime industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) Parts 1913, 1917, 1918, and 1919. Section 2 also updates the C.F.R. to July 1, 2008, and establishes the amendments to 29 C.F.R. 1917.71 and 1918.85, published in the December 10, 2008 Federal Register, Volume 73, Number 238, which requires specific work practices and training for performing vertical tandem lifts (VTLs). As a result of a final rule published in the December 10, 2008 Federal Register, 803 KAR 2:50 must be amended to include changes in 29 C.F.R. 1917 and 1918. OSHA is revising the Maritime Terminal's standard and related portions of the Longshore standard to adopt new requirements related to the practice of lifting two (2) intermodal containers together, on top of the other, connected by semiautomatic twist locks (SALTs). This practice is known as a vertical tandem lift (VTL). The final rule permits VTLs of no more than two (2) empty containers provided certain safeguards are followed. Since the 1970s, intermodality (the containerization of cargo) has become the dominant mode of cargo transport to the maritime industry. Intermodality typically involves three (3) key components:
   1. Standardized containers with uniform corner castings;
   2. Interbox connectors (such as SALTs) to secure the containers (to each other at the four corners and to the deck of the ship); and
   3. A type of crane called a container gantry crane that has specialized features for the rapid lifting and unloading of containers.
      During shipment, containers above deck are secured by interbox connectors to each other and to the deck of the ship. In the conventional loading and unloading process, the container gantry crane lifts one (1) container (either 6.1 or 12.2 meters long) at a time, using the crane's specially developed spreader beam. Conversely, a VTL is the practice of a container crane lifting two or more intermodal containers, one on top of the other, connected by a particular type of interbox connector known as a semiautomatic twistlock or SALT. OSHA originally proposed to permit VTLs of two (2) partially loaded intermodal containers, one on top of the other, connected by SALTs or other interbox connectors under certain stated conditions. The proposal would have allowed VTLs with a maximum total weight of 20 tons (combined weight of the containers and cargo). Several rulemaking participants strongly objected to this OSHA proposal. The participants submitted considerable evidence on the safety of VTLs. After considering all the evidence in the record, OSHA has concluded the safety of VTLs can only be ensured when a maximum of two (2) empty containers are lifted. The changes to 29 C.F.R. 1917 and 1918 reflect the final rule that VTLs consist of two (2) identical containers, each weighing no more than 10 tons, with a maximum total weight of 20 tons. The changes also require that each VTL is equipped with a system that prevents the accidental lifting of the other container when one is lifted. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

   (b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the December 10, 2008 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by June 10, 2009. 29 C.F.R. 1952.5 mandates the Kentucky OSH Program and also implements this requirement no later than June 10, 2009. Pursuant to KRS 338.051(3), the amendment to 803 KAR 2:50 was adopted by the Commissioner of the Kentucky OSH Standards Board in order to meet the federal time requirement.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

   (e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the maritime industry to comply with the requirements of 29 C.F.R. Parts 1913, 1917, 1918, and 1919. Section 2 also updates the C.F.R. to July 1, 2008, and establishes the amendments to 29 C.F.R. 1917.71 and 1918.85, published in the December 10, 2008 Federal Register, Volume 73, Number 238, which permits VTLs of no more than two (2) empty containers provided certain safeguards are followed.

   (b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the December 10, 2008 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by June 10, 2009. Pursuant to KRS 338.051(3), the amendment to 803 KAR 2:50 was adopted by the Commissioner of the Kentucky OSH Standards Board in order to meet the federal time requirement.

   (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

   (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in maritime employment activities covered by KRS Chapter 338.

   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: OSHA believes that employers are already using the interbox connectors meeting these requirements in existing vessel operations. Periodic requirements including training and development of written procedures will be required to comply with this final rule. OSHA also believes that most employers have already conducted training in current procedures and would only need to provide training on any revisions required by the final rule.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates of compliance costs and benefits show that there is a net economic benefit to VTLs. Because there are positive net benefits to VTLs, the Agency concludes the final standard, as it applies to VTLs of two (2) empty containers, is economically feasible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA determined that with full compliance under the final rule, no future injuries or fatalities are expected to occur while performing VTLs.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, Pub.L. 91-595, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the December 10, 2008 promulgation date of the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by June 10, 2009. Pursuant to KRS 338.051(3), the amendment to 803 KAR 2:500 was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the December 10, 2008 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by June 10, 2009. Pursuant to KRS 338.051(3), the amendment to 803 KAR 2:500 was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government which is covered by KRS Chapter 338 and engaged in maritime employment activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-595 84 STAT. 1550, 29 C.F.R. Parts 1952 and 1953.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? OSHA estimates of compliance costs and benefits show that there is a net economic benefit to VTLs. Because there are positive net benefits to VTLs, the Agency concludes the final standard, as it applies to VTLs of two (2) empty containers, creates no net cost and is economically feasible.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates of compliance costs and benefits show that there is a net economic benefit to VTLs. Because there are positive net benefits to VTLs, the Agency concludes the final standard, as it applies to VTLs of two (2) empty containers, creates no net cost and is economically feasible.

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

Revenue (+/-): Unknown
Expenditures (+/-): Unknown

Other explanation: OSHA believes that employers are already using the equipment required by the standard and the only cost would be time spent meeting the training and procedural requirements of the final rule. This cost is offset by the money saved in potential worker's compensation costs related to injuries or illness incurred by failure to follow this final rule.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Breeders' Incentives
(Amendment)

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

RELATES TO: KRS 230.225(7)(b), (7)(e), 230.330, 230 804, EO 2008-668

STATUTORY AUTHORITY: KRS 230.804(2)(b), EO 2008-668

NECESSITY AND CONFORMITY: KRS 230.804 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.804(2)(b) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to Commission. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions. (1) "Applicant" means a Kentucky affiliate representing a breed of horses which is eligible to register with
the Commission to participate in the Kentucky Horse Breeders' Incentive Fund.

(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the Commission outlining the procedures by which the Kentucky affiliate shall award funds from the Kentucky Horse Breeders' Incentive Fund to incentive winners who are members of the Kentucky affiliate.

(3) "Breed" means a subspecies of horse with particular physical characteristics common to the subspecies which are used in establishing the identity of a horse by a registry recognized by the Commission.

(4) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a Kentucky affiliate's award distribution plan.

(5) "Incentive winner" means a person whose horse's performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.

(6) "Kentucky affiliate" means the Kentucky organization that is recognized by a national breed organization representing that particular breed of horse in Kentucky.

(7) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.

(8) "KHIBIF" means the Kentucky Horse Breeders' Incentive Fund.

(9) "Breed" means a person or persons engaged in the breeding of horses eligible for the KHIBIF, as defined by the National Association of the Kentucky Breeders recognized by the commission as a participant in the KHIBIF Program. If the National Association does not define "breed," the commission shall define "breed" as the owner of the dam of a horse at the time the horse was foaled.

(10) "Closed Breed Registry" means the registration restrictions of the official national breed registry recognized by the KHIBIF. "Kentucky affiliate" means the Kentucky organization recognized by a national breed organization as the organization representing that particular breed of horse in Kentucky.

Section 2. Registration of Kentucky Affiliate. (1) Only a Kentucky affiliate may register to participate in the KHIBIF.

(2) To become eligible to receive funds from the KHIBIF, a Kentucky affiliate shall register with the Commission by:

(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/02/12/24); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the Commission.

(3) A thoroughbred breed shall not be eligible for registration with the KHIBIF.

(4) A standardbred breed shall not be eligible for registration with the KHIBIF, unless the standardbred breed consists exclusively of show horses.

(5) The color of a breed of horses shall not be the sole criterion used to define that breed for purposes of registration with the KHIBIF.

(6) The authority may establish, under the general jurisdiction of the Kentucky Horse Racing Commission, the Kentucky Horse Breeders' Incentive Fund Advisory Committee. It established, the advisory committee shall consist of three (3) members appointed by the chairman of the Commission. One (1) member shall be recommended to the Commission for appointment by the Kentucky Equine Education Project (KEEP). If KEEP has not recommended a member for appointment by July 1 of a given year, the Chairman of the Kentucky Horse Racing Commission shall make the appointment without the recommendation. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. Each member of the advisory committee shall serve without compensation, but be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(7) The Kentucky Horse Breeders' Incentive Fund Advisory Committee shall advise and assist the Kentucky Horse Racing Commission in the registration process described in this section. The advisory committee shall make a recommendation of approval or denial to the Commission for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section.

(8) After the advisory committee recommends to the Commission the approval or denial of an application, the Commission shall consider the recommendation and whether or not the requirements of this administrative regulation have been met, and shall:

(a) Approve the application;

(b) Deny the application; or

(c) Delay consideration of the application for a reasonable time for the purpose of conducting further investigation of the application.

(9) Registration shall be effective for three (3) years. The first three (3) year registration period shall consist of the period beginning January 1, 2006, and ending December 31, 2008.

(10) For the first registration period a Kentucky affiliate shall register with the Commission on or prior to March 1, 2006.

(11) For each three (3) year period beginning January 1, 2009, a Kentucky affiliate shall register with the Commission on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) year registration period.

(12) A Kentucky affiliate shall have until December 31 following the November 1 deadline set forth in subsection (11) of this section to revise and update any information previously provided to the Commission on or before the November 1 deadline.

(13) The application and the accompanying award distribution plan provided to the Commission shall set forth the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed residing in Kentucky; and

(d) A letter from the nation breed organization certifying that the breed has a closed breed registry and the award distribution plan pursuant to which awards shall be distributed to KHIBIF incentive winners who are breeders or owners of horses bred and/or foaled in Kentucky. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization;

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization;

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization; and

4. The percentage distribution formula by which the Kentucky affiliate shall grant awards to incentive winners.

(14) The Commission shall recognize and designate as the sole official registrar of the Kentucky Horse Breeders' Incentive Fund for the purpose of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the Commission for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky; and

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.
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(15) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall be responsible for promptly notifying the commission[Authority] of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to change.

Section 3. Timing and Distribution of Awards. (1) The events eligible for awards from the Kentucky Horse Breeders’ Incentive Fund, as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distributed in the year.

(3) The commission[Authority], with the cooperation of each Kentucky affiliate shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.

(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:

(a) Dividing the number of horses of the breed twenty-five (25) years of age and younger and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(13)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(13)(c) of this administrative regulation. The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate’s application form on the December 31 deadline preceding the three (3) year registration period; and

(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.

(5) An award to an Incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the commission[Authority] pursuant to Section 2(2)(b) of this administrative regulation.

(6) The Kentucky affiliate shall, by March 1 of each year, determine the names of the Incentive winners who are entitled to awards for contests held during the previous year and provide the names of the incentive winners to the commission[Authority].

(7) The commission[Authority] shall, by June 1 of each year, notify each incentive winner of the amount of the award to which the incentive winner is entitled by notice sent to the last known address provided to the commission[Authority] by the Kentucky affiliate.

(8) After receiving notification of an award, each incentive winner shall be required to return an enclosed claim form for the award that certifies that the incentive winner has reported to the award and certifies the incentive winner’s Social Security number. The claim form shall be delivered to the commission[Authority] no later than December 31 of the year in which the commission[Authority] notified the incentive winner of the award pursuant to subsection (7) of this section.

(9) The claim form shall be the form “Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders’ Incentive Fund”, KHRA Form HB-2, (12/06).

(10) Any award owing to an incentive winner who cannot be located by December 31 of the year in which the commission[Authority] attempted to notify the incentive winner of the award pursuant to subsection (7) of this section, shall lapse to the KHBIF.

(11) Failure to return the claim form required by subsection (9) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.

(12) An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semi-annual Reports. (1) A semi-annual status report describing a Kentucky affiliate’s progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31. If that date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The semi-annual report shall also include:

(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand;

(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate.

Section 5. Disputes. (1) Any dispute between the commission[Authority] and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the commission[Authority], within thirty (30) days of the action or the inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures. (1) The commission[Authority] may deny or revoke the registration of a Kentucky affiliate or national breed organization if the Kentucky affiliate or national breed organization:

(a) Knowingly provides the commission[Authority] with incorrect, false, or misleading information concerning any aspect of the registration of the breed represented by the Kentucky affiliate with the commission[Authority];

(b) Knowingly fails to furnish within thirty (30) days information the commission[Authority] has requested relating to the registration; or

(c) Knowingly violates any provision of KRS Chapter 230 or Title 810 or 811 KAR[the administrative regulation] in any other manner.

(2) If the commission[Authority] denies or revokes the registration of a Kentucky affiliate or national breed organization, the Kentucky affiliate or national organization may request, and the commission[Authority] shall schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the commission[Authority] shall, in its final order, determine whether the Kentucky affiliate or national breed organization has knowingly provided the commission[Authority] with incorrect, false, or misleading information, or has knowingly failed to provide the commission[Authority] with requested information, or has knowingly violated any provision of KRS Chapter 230 or Title 810 or 811 KAR[the administrative regulation] in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Uphold the denial or revocation of the registration; or

(c) Rescind the denial or revocation of the registration; or

(d) Bar the Kentucky affiliate or national breed organization which failed to furnish the requested information or which has knowingly violated this administrative regulation from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective; or

(e) Without funds due to be allocated to the Kentucky affiliate; or

(f) Withdraw funds previously allocated to the Kentucky affiliate; or

(g) If a Kentucky affiliate’s designee or representative fails to appear at the hearing, the commission[Authority] may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the Kentucky affiliate which failed to respond to the summons from registering foals to the fund for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective; or

(c) Withhold funds due to be allocated to the state affiliate; or

(d) Reschedule the hearing.

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(5) For a second or subsequent violation of this administrative regulation, the Commission [Authority] may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBF for period of from one (1) to twenty (20) years.

(6) The Commission [Authority] shall notify the Kentucky affiliate in writing of the action taken by the Commission [Authority].

(7) If the evidence available to the Commission [Authority] indicates that an individual who is a member of, or acting on behalf of, a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, knowingly provided the Commission [Authority] with incorrect, false, misleading or incomplete information, knowingly failed to provide the Authority with requested information, or knowingly violated the federal Horse Protection Act, 15 U.S.C. Sections 1821 through 1831, or any other federal or state law pertaining to the breeding, racing, or showing of horses, or reflecting on the honesty and trustworthiness of the individual to participate in the KHBF [the administrative regulation in any other manner], the Commission may take the following actions:

(a) [Authority] may condition the continuing registration of the Kentucky affiliate in the KHBF upon the exclusion of that individual from any further participation in work related to the KHBF.

(b) Withdraw funds previously allocated to the individual.

(c) Withhold funds due to be allocated to the individual.

(d) Bar the individual from further participation in the KHBF for a period of time proportionate to the severity of the violation.

(8) An individual against whom disciplinary action has been taken under subsection (7) of this section may appeal the matter to the Commission pursuant to KRS Chapter 13B.

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

(a) "Application for Registration of State Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/08/06):

(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, (12/08/06).

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

(3) This material may also be obtained from the KHRC [KHRA] Web site at www.khrc.ky.gov/whrra.ky.gov.

ROBERT M. BECK, Jr., Chairman
LARRY R. BOLE, Deputy Secretary
APPROVED BY AGENCY: December 30, 2008
FILED WITH LRC: December 31, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009, 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 Commission in writing by February 17, 2009 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 March 2, 2009. 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: Jamie Eads, Director, Division of Breeders' Incentives and Development, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 266-4717, fax (859) 266-2809.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Jamie Eads

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the procedures for administering the Kentucky Horse Breeders' Incentive Fund, established in 2006 by KRS 230.804.

(b) The necessity of this administrative regulation: The regulation is necessary to provide mechanisms for registering with the Fund, distributing funds among registered groups, and imposing disciplinary measures for violation of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.804 specifically authorizes the Kentucky Horse Racing Commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in administering KRS 230.804 by providing detailed guidance regarding how registration with and disbursements from the Fund are to be accomplished.

(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 a definition of "breeder" to the regulation. "Breeder" is now defined as a person or persons as defined by the National Association of the Kentucky Affiliate recognized by the Commission as a participant in the KHBF program. If the National Association does not define "breeder", the commission shall define "breeder" as the owner or co-owner of the dam of a horse at the time the horse was foaled. The amendment will require that registered groups have a closed breed registry, meaning that horses within the breed must be able to trace ancestry back to foundation bloodstock. A closed breed registry ensures that horses are purebred members of the breed. The amendment provides more detail regarding the disciplinary measures that can be taken for violating the law. The amendment provides, for example, that a violation of an amendment KRS Chapter 230 or Titles 810 or 811 of the Kentucky Administrative Regulations, the federal Horse Protection Act, or any other state or federal law pertaining to the breeding, racing, or showing of horses, or reflecting on the honesty and trustworthiness of the individual to participate in the KHBF, is grounds for discipline. The amendment also clarifies that an individual within a group who violates state or federal law or demonstrates dishonest behavior can be barred from participation in the Fund, and that funds due to the individual can be withdrawn (if previously paid out) or withheld in the future from that individual.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make the changes set forth in (2)(a) above, which will ensure that monies from the Fund are paid only to bona fide members of the breed, and that individuals who violate the law can be excluded from participation in the Fund.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.804 specifically authorizes the Kentucky Horse Racing Commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the fund.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to the regulation will ensure that incentive funds are paid only to individuals who own bona fide members of the breed and who comply with the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 11 groups registered with the Kentucky Horse Breeders' Incentive Fund, with a combined membership of 115, 305.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No specific actions are required, except that henceforth an applicant to the Fund group must demonstrate that it has a closed breed registry.
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(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The integrity of the Fund will be further guaranteed by clarifying the commission’s power to take action against individuals who violate the law.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Implementation and enforcement of this administrative regulation is funded from registration fees associated with the Kentucky Horse Breeders’ Incentive Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation. If new, or by the change if it is an amendment. No additional fees or funding will be necessary to implement the changes in this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established, and existing fees are not increased.

(9) TIERING: Is tiering applied? Tiering is not applied; the registrants in the Fund participate on an equal basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by the administrative regulation? This regulation impacts the Kentucky Horse Racing Commission, which administers the Kentucky Horse Breeders’ Incentive Fund.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.804 establishes the Kentucky Horse Breeders’ Incentive Fund and authorizes the Kentucky Horse Racing Commission to promulgate regulations to administer the Fund.

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 amendment to this regulation will not alter the expenditures and revenues of the Kentucky Horse Racing Commission.

(a) How much 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 is generated by 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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B 010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B 0; 0, 216B.015(27), 216B.040(2)(a)(2a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B 040(2)(a2a) requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.


(1) Review a certificate of need application pursuant to KRS 216B 040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B 015(29)(a) and 216B 061(1)(d).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary
APPROVED BY AGENCY: December 30, 2008
FILED WITH LRC: December 31, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 23, 2009, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this public hearing shall notify this agency in writing by February 16, 2009, 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 regarding this proposed administrative regulation until close of business March 2, 2009. Send written notification of intent to attend the public hearing and 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 TEIRING STATEMENT

Contact Person: Shane P. O’Donley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.

(b) The necessity of this administrative regulation: KRS 216B 015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.

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

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(a) How the amendment will change this existing administrative regulation: The amendment will update the 2007-2009 State Health Plan for 2007.

(b) The necessity of the amendment to this administrative regulation KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2005, so the next triennial plan is being prepared for 2007-2009.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment comes out the requirement of KRS 216B.015(27) that the State Health Plan be updated on an annual basis.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will only apply to potential Certificate of Need applicants for Psychiatric Hospital Beds, Home Health Services, Adult Day Health Care Programs, Magnetic Resonance Imaging Equipment, Megavoltage Radiation Therapy Equipment, Positron Emission Tomography Equipment and Pre-scription Pediatric Extended Care Facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. The CON application fee is unaffected by this proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants proposing to establish adult day health programs and/or prescribed pediatric extended care facilities will benefit from an expedited review process because those service categories have been removed from the State Health Plan. These changes may increase access to adult day health care services for the elderly and prescribed pediatric extended care facilities for our medically needy children and their working parents.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing 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.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None to 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? None to revenues will be generated to state or local government.

(c) How much will it cost to administer this program for the first year? None to costs.

(d) How much will it cost to administer this program for subsequent years? None to costs.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:106. Operation and services; ambulatory surgical center.


STATUTORY AUTHORITY: KRS 216B.040, 216B.105(2), (3), 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) and (c) require the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the licensure requirements for the operation of services of ambulatory surgical centers.

Section 1. Definitions. (1) "Admission" shall be deemed to have occurred after completion of the registration process and at the first instance of rendering medical care to the patient on the day of the scheduled procedure as a part, or in anticipation of a surgery.

(2) "Ambulatory surgical center" means a public or private institution that is:

(a) Hospital based or freestanding;
(b) Operated under the supervision of an organized medical staff; and
(c) Established, equipped, and operated primarily for the pur-
pose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

3(9) "Cabinet" is defined by KRS 2163.015(5).

4(3) "Center" means an ambulatory surgical center.

5(4) "Licensee" means a person or business entity that has been issued and holds a valid ambulatory surgical center license from the Cabinet for Health and Family Services.

Section 2. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for operation of the center and for compliance with federal, state, and local laws and regulations pertaining to operation of the center;

(b) The licensee shall develop written policies for the administration and operation of the center. Medical staff shall approve medical policies. Policies shall include:

1. Personnel practices and procedures. These shall be available to personnel;

2. Job descriptions for each level of personnel including the authority, responsibilities, and actual work to be performed in each classification;

3. Written infection control measures. Written procedures shall govern the use of aseptic techniques and procedures in all areas of the center;

4. Sterilization of supplies;

5. Disposal of patient waste and other potentially infectious materials;

6. Examination by a pathologist of tissues removed during surgery. Policies shall identify tissues which require examination and which do not;

7. Instances in which consultations with other physicians, dentists, or podiatrists shall be required;

8. A list of surgical procedures which may be performed in the center;

9. Granting and withdrawal of medical staff surgical privileges and privileges for the administration of anesthetics; and

10. Arrangement for transportation of patients who require hospital care.

(2) Personnel.

(a) Administrator. The center shall have an administrator responsible for the day to day operation of the center and for delegating that responsibility in his absence.

(b) Current employee records shall be maintained and shall include:

1. A resume of the employee's training and experience;

2. Evidence of current licensure or registration if required; and

3. Reports of accidents occurring while the employee is on duty;

(c) Medical staff requirements. The center shall have an organized medical staff responsible for the quality of medical care provided in the center and for the ethical and professional practices of its members.

1. The medical staff shall develop the center's medical care policies.

2. Surgical procedures shall be performed by physicians, dentists, or podiatrists who are legally authorized to perform them and have been granted privileges to perform the procedures by the center through its medical staff or governing body.

(d) Pharmaceutical, radiology, and laboratory services provided directly by the center or through an agreement with another entity shall be provided under the direction of a licensed pharmacist, a physician specializing as a radiologist, and a physician specializing as a pathologist, respectively, on a full-time, part-time, or regular consultative basis.

(e) The center shall employ registered nurses on a full-time basis for patient care in the operating and postanesthesia recovery room.

(f) The center shall employ other nursing personnel, aides, and technicians as required to meet the needs of the patients served by the center including personnel to be responsible for supervision, indexing, and filing of medical records.

3 A center shall not retain a patient longer than twenty-four (24) hours from the time of admission to discharge. [The center shall not provide accommodations for overnight stays.]

4 The center shall not have provisions for obstetrical deliveries.

5 Physician coverage. A physician or the practitioner that performs the surgery shall be present in the center until all patients have been discharged and have left the center.

6 The center shall have a physician on the medical staff with admitting privileges in a nearby hospital who is responsible for admitting patients in need of inpatient care.

(7) Medical records.

(a) Content. Adequate and complete medical records shall be prepared for all patients admitted to the surgical center. Notes shall be legibly written or typed and signed. A medical record shall include the following information:

1. Name and address of person or agency responsible for patient;

2. Patient identification data, including the patient's:

   a. Name;

   b. Address;

   c. Age;

   d. Sex; and

   e. Marital status;

3. Date of admission and discharge;

4. Referring and attending physicians', dentists' and podiatrists' names;

5. A medical history and physical evaluation that was performed and entered into the medical record no more than thirty (30) days prior to surgery;

6. A surgical consent form that has been signed by the patient or his legal representative prior to the surgical procedure;

7. All preoperative diagnostic studies and laboratory tests;

8. Special examinations, such as consultations, clinical laboratory, and x-ray;

9. Nurses' notes;

10. Complete medical record signed by the operating surgeon, including:

   a. Anesthesia record;

   b. Preoperative diagnosis;

   c. Operative procedures and findings;

   d. Postoperative diagnosis;

   e. Condition of patient upon discharge;

   f. Postoperative instructions; and

   g. If required, tissue diagnosis by a pathologist on specimens surgically removed;

11. Charts including records of temperature, pulse, respiration, and blood pressure; and

12. Medication record including:

   a. Name of medication;

   b. Dosage;

   c. Date and time of administration;

   d. Method of administration;

   e. Name of prescribing physician, dentist, or podiatrist; and

   f. Name of person who administered the medication.

6 Indexing. Medical records shall be systematically filed for ready access to authorized personnel.

(c) Ownership. Records of patients shall not be removed from the center's custody except in accordance with a court order or subpoena. Medical records shall be made available if requested for inspection by duly authorized representatives of the cabinet.

(d) The attending physician, dentist, or podiatrist shall complete and sign the medical record of the patient as soon as practicable after discharge, but not to exceed ten (10) days.

(e) Orders for medication and treatment shall be dated, timed, and signed by the prescribing physician, dentist, or podiatrist, or the health care practitioner who receives the verbal order. Verbal orders shall be countersigned by the prescribing physician, dentist, or podiatrist within forty-eight (48) hours, except that records for Schedule II drugs shall be signed immediately. A record of medication administered to the patient shall be included in the record and signed by the person administering the medication.

(f) Retention of records. Medical records shall be retained for a minimum of five (5) years or, in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

6 Bedrails shall be available for patients in the admitting and recovery units.
Section 3. Sanitary Environment. The surgical center shall provide a sanitary environment to avoid sources and transmission of infections.

(1) An infection committee composed of members of the medical and nursing staff shall be established and be responsible for controlling and preventing infections within the center.

(2) Non-disposable sterile supplies shall be reprocessed if the integrity of the pack has not been maintained.

(3) The center shall have suitable equipment for rapid and routine sterilization of supplies, utensils and equipment and shall store them in a clean, convenient and orderly manner.

(4) Continuing education shall be provided to all surgical center personnel on the cause, effect, transmission, prevention and elimination of infections.

Section 4. Surgical Services. (1) The center shall provide treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) The center shall have at least one (1) operating room.

(3) A patient shall be examined by a physician, dentist, or podiatrist acting within the professional's scope of practice immediately prior to surgery to evaluate the risk of anesthesia and the risk of the procedure to be performed.

(4) A registered nurse shall be available to circulate at all times. The operating rooms shall be supervised by a registered nurse.

(5) The center shall have on file a list of all physicians, dentists, and podiatrists with surgical privileges at the center and the privileges assigned to each by the medical staff.

(6) The center shall maintain a complete and up-to-date operating room register.

(7) The following equipment shall be available in the center:
   (a) Oxygen;
   (b) Mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator;
   (c) Cardiac defibrillator;
   (d) Cardiac monitoring equipment;
   (e) Tracheostomy set;
   (f) Laryngoscopes and endotracheal tubes;
   (g) Suction equipment; and
   (h) Emergency medical equipment and supplies specified by the medical staff.

(8) The center shall have arrangements for obtaining an adequate supply of blood in a timely manner to meet the center's needs.

(9) A physician's, dentist's, or podiatrist's orders shall be in writing and signed by the physician, dentist, or podiatrist.

(10) Except for cases requiring only local infiltration anesthesia, a physician anesthesiologist, a physician qualified to administer anesthesia, a dentist qualified to administer anesthesia, or a registered nurse anesthetist acting under the direction of the operating surgeon shall administer the anesthetics and remain present during the surgical procedures and until the patient is fully recovered from the anesthetics.

(11) The physician, dentist, or podiatrist in charge of the patient shall be responsible for seeing that tissue removed during surgery is delivered to the center's pathologist and that an examination and report is made on the tissue, if required by the center's written policies.

12. Voluntary interruption of pregnancies. An ambulatory surgical center shall comply with the applicable Kentucky statutes concerning the voluntary interruption of pregnancies, including KRS 311.710 to 311.810.

Section 5. Postanesthesia Recovery Services. (1) The center shall have at least one (1) postanesthesia recovery unit.

(2) There shall be adequate staff available in the recovery unit so that no patient is left alone at any time.

(3) A registered nurse shall be present in the recovery unit when a patient is recovering from anesthesia.

(4) A registered nurse shall be available to the recovery unit at all times.

(5) A person staffing the postanesthesia recovery unit shall be adequately trained in all aspects of postoperative and postanesthetic care.

(6) The recovery unit nurse shall record a nursing note on a patient, noting the following:
   (a) Postoperative abnormalities or complications;
   (b) Pulse;
   (c) Respiration;
   (d) Blood pressure;
   (e) Presence or absence of swallowing reflex;
   (f) Cyanosis; and
   (g) The general condition of the patient.

(7) Available equipment shall include the following:
   (a) Suction machine;
   (b) Stethoscope;
   (c) Sphygmomanometer;
   (d) Emergency crash cart;
   (e) Necessary drugs; and
   (f) Oxygen.

(8) The surgical center shall provide suitable accommodations for its patients. There shall be adequate floor space, furnishings, bedliners, and such other utensils, equipment and supplies as are reasonably required for the proper care of the patients accommodated.

Section 6. Pharmaceutical Services. (1) The center shall have a licensed pharmacy or have arrangements for promptly obtaining prescribed drugs and biologicals from a pharmacy.

(2) The center shall provide appropriate methods and procedures for storage, control and administration of drugs and biologicals, developed with the advice of a licensed pharmacist. The pharmacist shall properly label drugs for individual patients.

(3) Licensed medical or nursing personnel shall administer medications in accordance with medical and nursing standards of practice set forth in KRS 311.360 to .500, 311.530 to .620, 313.010 to .258, 313.400 to .470, 314.011 to .110, 314.193, and 314.195.

(4) Controlled substances:
   (a) Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record in which is recorded the:
      1. Name of the patient;
      2. Dose and time;
      3. Kind of controlled substance;
      4. Dosage and method of administration of the controlled substance;
      5. Name of the physician who prescribed controlled substance; and
      6. Name of the nurse who administered it.
   (b) In addition to the requirements established in paragraph (a) of this subsection, there shall be a recorded and signed Schedule II controlled substances count daily conducted by a member of the nursing staff; and Schedule III, IV, and V controlled substances count once per week by a member of the nursing staff.

Section 7. Radiology Services. (1) The center shall provide radiology services directly through an agreement with a licensed hospital, or through an independent radiology service.

(2) The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852.

(3) If radiology services are provided directly by the center:
   (a) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against:
      1. Fire and explosion hazards;
      2. Electrical hazards; and
      3. Radiation hazards;
   (b) A physician specializing in radiology shall supervise the department and interpret films that require specialized knowledge for accurate reading;
   (c) Radiology reports shall be promptly entered into the medical record and duplicate copies kept in the department; and
   (d) Orders for radiology procedures shall be made by a physician, dentist or podiatrist.

Section 8. Laboratory Services. (1) The center shall provide laboratory services directly through its own licensed laboratory,
through an agreement with a laboratory in a licensed hospital, or through an agreement with a licensed laboratory nearby.

(2) The medical laboratory providing services to the center shall be licensed pursuant to KRS 333.030, unless it is a part of a licensed hospital.

(3) Laboratory examinations shall be made only upon the request of a physician, dentist, or podiatrist;

(4) The laboratory shall provide tissue pathology and diagnostic cytology examinations. Tissues removed from a patient during surgery shall be examined by a physician specializing in pathology if required by the center's written policies; and

(5) Laboratory and tissue pathology reports shall be signed and entered into the medical record.

Section 9. Utilization Review. (1) The surgical center shall have in effect a plan for utilization review of their services on at least a quarterly basis by a committee of physicians, dentists, or podiatrists who have no financial interest in the center.

(2) Reviews shall be made of admissions and professional services furnished including utilization of surgical services and tissue reports

SADIAQ N. REYNOLDS, Esq. Inspector General
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 5, 2009
FILED WITH LRC: January 5, 2009 at 3 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure requirements for the operation and services of ambulatory surgical centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1)(a) and (c) which requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing ambulatory surgical center standards necessary for the proper administration of the licensure function.

(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 ambulatory surgical center standards necessary for the proper administration of the licensure function.

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

(a) How the amendment will change this existing administrative regulation: This amendment defines the term "admission" and clarifies that an ambulatory surgical center shall not retain a patient longer than twenty-four (24) hours from the time of admission to discharge. Currently, this administrative regulation prohibits ambulatory surgical centers from retaining patients for overnight stays.

(b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to clarify the length of time allowed for patient stays in ambulatory surgical centers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by clarifying the licensure standard related to the length of stay permitted in ambulatory surgical centers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 216B.042 by clarifying the licensure standard related to the length of stay permitted in ambulatory surgical centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the thirty-seven (37) currently licensed ambulatory surgical centers.

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

(a) State the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Ambulatory surgical centers will be permitted to retain a patient up to twenty-four (24) hours from the patient's time of admission to discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Because this amendment does not alter the current fee schedule, ambulatory surgical centers will not incur additional costs to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies the licensure standard related to the length of stay permitted in an ambulatory surgical center.

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

(a) Initially: No additional costs will be incurred by the Office of Inspector General to implement this amendment.

(b) On a continuing basis: No additional costs will be incurred by the Office of Inspector General to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will 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 amendment does not establish any fees, nor does it increase any fees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the thirty-seven (37) currently licensed ambu-

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latory surgical centers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 2168.042

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the Office of Inspector General to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the Office of Inspector General 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 Medicaid Services
Commissioner's Office
(Adoption)

907 KAR 3:170. Telehealth services and reimbursement.

STATUTORY AUTHORITY: KRS 194A 030(2), 194A 050(1), 205.520(3), 205.559(2), (7), 205.560
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the Cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services and reimbursement. This administrative regulation establishes the coverage provisions relating to telehealth services and the method of determining reimbursement for services by the Department for Medicaid Services in accordance with KRS 205.559.

Section 1. Definitions. (1) "Advanced registered nurse practitioner" or "ARNP" is defined by KRS 314 011(7).
(2) "Certified registered nurse anesthetist" or "CRNA" is defined by KRS 310 005(12).
(3) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.
(4) (5) "Consultation" means a type of evaluation and management service as defined by the most recent edition of the Current Procedural Terminology published annually by the American Medical Association.
(6) (9) "CPT code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology.
(7) (10) "Department" means the Department for Medicaid Services or its designated agent.
(11) (14) "Encounter" means one (1) visit by a recipient to a telehealth site where the recipient receives a service or care, during the visit, from a provider at a telehealth hub site.
(12) (15) "Federal financial participation" is defined in 42 C.F.R. 400.253.
(13) (16) "GT modifier" means a modifier that identifies a telehealth service which is approved by the healthcare common procedure coding system (HCPCS).
(17) (20) "Health care provider" means a Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672 who is:
(a) Licensed physician;
(b) Licensed advanced registered nurse practitioner;
(c) Certified physician assistant working under physician supervision;
(d) Licensed physician assistant; or
(e) Community mental health center;
(f) A Psychologist with a license in accordance with KRS 319 010(6); or
(g) Licensed clinical social worker.
(18) (21) "Hub site" means a telehealth site where the telehealth provider performs telehealth[medicolegal-specialist providing the telehealth service is located] and is considered the place of service.
(19) (22) "International statistical classification of diseases code" or "ICD code" means the most current code classifying a disease or wide variety of signs, symptoms, abnormal findings, complaints, social circumstances, or external causes of injury or disease, up to six (6) characters long and published by the World Health Organization.
(20) (23) "KenPAC" means the Kentucky Patient Access and Care System.
(24) (26) "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.
(25) (27) "Licensed professional clinical counselor" is defined by KRS 335 500(6).
(26) (28) "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(27) (29) "Occupational therapist" is defined by KRS 319A 010(3).
(28) (30) "Physical therapist" is defined by KRS 327 010(2).
(29) (31) "Physician" is defined by KRS 311 550(12).
(30) (32) "Psychiatric medical resident" means an individual who:
(a) Possesses a special faculty license in accordance with KRS 311 550(29);
(b) Meets the qualification for licensure requirements established in KRS 311 571(11) or (2); and
(c) is a resident as defined by 42 C.F.R. 415.152.
(31) (33) "Psychiatric registered nurse" means a registered nurse who:
(a) Has a master of science in nursing with a specialty in psychiatric or mental health nursing;
(b) Has a bachelor of science in nursing and at least one (1) year of experience in a mental health setting;
(c) is a graduate (possesses a diploma) of a three (3)-year educational program and has at least two (2) years of experience in a mental health setting;
(d) has an associate degree in nursing and at least three (3) years of experience in a mental health setting; or
(e) has any level of education with American Nursing Association (ANA) certification as a psychiatric or mental health nurse.
(32) (34) "Psychologist" is defined by KRS 319 010(8).
(33) (35) "Registered nurse" is defined by KRS 314 011(5).
Section 2. Telehealth Coverage For Telehealth Not Provided In
A Community Mental Health Center. (1) The department shall
reimburse for the following telehealth activity not provided via
a community mental health center in accordance with the following
provisions;
(a) Wound care with a CPT code of 97601 or 97602 provided
by a physician or advanced registered nurse practitioner;
(b) A service provided by a physician or ARNP which has an
evaluation and management code of 99201 through 99215; and
(c) A service provided by a physician or ARNP, with an eval-
uation and management code of 99241 through 99255;
(d) A psychiatric diagnosis or evaluation interview with a CPT
code of 90861 through 90869 if provided by:
1. A psychiatrist;
2. A licensed clinical social worker directly employed by a psy-
chiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
3. A psychologist with a license in accordance with KRS
319.010(5) and a doctorate degree in psychology directly em-
ployed by a psychologist if the psychiatrist also interacts with
the recipient during the telehealth encounter;
4. A licensed professional clinical counselor directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
5. A licensed marriage and family therapist directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
6. A physician or
7. An ARNP;
(e) Outpatient individual psychotherapy with a CPT code of
90864 through 90869 if provided by:
1. A psychiatrist;
2. A licensed clinical social worker directly employed by a psy-
chiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
3. A psychologist with a license in accordance with KRS
319.010(5) and a doctorate degree in psychology directly em-
ployed by a psychologist if the psychiatrist also interacts with
the recipient during the telehealth encounter;
4. A licensed professional clinical counselor directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient during
5. A licensed marriage and family therapist directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
6. A physician or
7. An ARNP;
(f) Outpatient individual interactive psychotherapy with a CPT
code of 90810 through 90815 if provided by:
1. A psychiatrist;
2. A licensed clinical social worker directly employed by a psy-
chiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
3. A psychologist with a license in accordance with KRS
319.010(5) and a doctorate degree in psychology directly em-
ployed by a psychologist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
4. A licensed professional clinical counselor directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
5. A licensed marriage and family therapist directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
6. A physician or
7. An ARNP;
(f) Outpatient individual interactive psychotherapy with a CPT
code of 90810 through 90815 if provided by:
1. A psychiatrist;
2. A licensed clinical social worker directly employed by a psy-
chiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
3. A psychologist with a license in accordance with KRS
319.010(5) and a doctorate degree in psychology directly em-
ployed by a psychologist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
4. A licensed professional clinical counselor directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
5. A licensed marriage and family therapist directly employed
by a psychiatrist if the psychiatrist also interacts with the recipient
during the telehealth encounter;
6. A physician or
7. An ARNP;
the telehealth encounter;
3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
6. A physician not to exceed four (4) encounters per recipient per year or
7. An ARNP not to exceed four (4) encounters per recipient per year;
   (i) Family therapy with a CPT code of 90847 if provided by:
   1. A psychiatrist;
   2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   6. A physician not to exceed four (4) encounters per recipient per year or
   7. An ARNP not to exceed four (4) encounters per recipient per year;
   (ii) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:
   1. A psychiatrist;
   2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   6. A physician not to exceed four (4) encounters per recipient per year or
   7. An ARNP not to exceed four (4) encounters per recipient per year;
   (iii) Psychiatric medication management with a CPT code of 90862 if provided by:
   1. A psychiatrist;
   2. A physician not to exceed four (4) encounters per recipient per year or
   3. An ARNP not to exceed four (4) encounters per recipient per year;
   (iv) Interpretation of data to family or others with a CPT code of 90867 if provided by:
   1. A psychiatrist;
   2. A physician not to exceed four (4) encounters per recipient per year or
   3. An ARNP not to exceed four (4) encounters per recipient per year;
   (v) Dialysis related service with a CPT code of 90918 through 90929 if provided by a physician;
   (vi) Initial visit with a CPT code of 99304 through 99305 to a new or established patient in a nursing home if provided by a physician or ARNP;
   (vii) Subsequent visit with a CPT code of 99308 through 99310 to a patient in a nursing home if provided by a physician or ARNP;
   (viii) Discharge of a patient from a nursing home with a CPT code of 99315 if provided by a physician or ARNP;
   (ix) Speech therapy evaluation with a CPT code of 92056 if provided by a speech-language pathologist;
   (x) Speech therapy treatment with a CPT code of 92057 if provided by a speech-language pathologist;
   (xi) Occupational therapy with a CPT code of 97001 if provided by an occupational therapist;
   (xii) Physical therapy with a CPT code of 97004 if provided by a physical therapist;
   (xiii) Individual medical nutrition therapy with a CPT code of G0270 or G0282 through G0284 if provided by a licensed dietitian or certified nutritionist;
   (xiv) End stage renal disease services with a CPT code of G0308, G0309, G0311, G0314, G0315, G0317, or G0318 if provided by a physician or ARNP;
   (xv) A neurobehavioral status exam with a CPT code of 96116 if provided by:
   1. A psychiatrist;
   2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the telehealth encounter;
   6. A physician not to exceed four (4) encounters per recipient per year or
   7. An ARNP not to exceed four (4) encounters per recipient per year;
   (xvi) The department shall not reimburse for a telehealth service if the service is not medically necessary.
   (xvii) The department shall not reimburse for a service via the administrative regulation if the service requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.
   (xviii) The department shall require:
   (a) The use of two (2) way interactive video;
   (b) A referral by a health care provider;
   (c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and
   (d) A referral by a recipient's KenPAC PCCM if the recipient is located pursuant to 42 C.F.R. 431.54 and 507 KAR 1.077.
   Section 3. Coverage of Telehealth Provided by a Community Mental Health Center.
   (1) The department shall reimburse for the following telehealth activity provided via a community mental health center in accordance with the following provisions:
   (a) A psychiatric diagnosis or evaluation interview with a CPT code of 90001 through 90032 if provided by:
   1. A psychiatrist;
   2. A physician;
   3. A psychologist with a license in accordance with KRS 319.010(5);
   4. A licensed marriage and family therapist;
   5. A licensed professional clinical counselor;
   6. A psychiatric medical resident;
   7. A psychiatric registered nurse;
   8. A licensed clinical social worker; or
   9. An advanced registered nurse practitioner;
   (b) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:
   1. A psychiatrist;
   2. A physician;
   3. A psychologist with a license in accordance with KRS 319.010(5);
   4. A licensed marriage and family therapist;
   5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(c) Outpatient Individual Interactive psychotherapy with a CPT code of 90810 through 90816 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(d) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(e) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(f) Other psychotherapy with a CPT code of 90845 through 90848 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(g) Family therapy with a CPT code of 90847 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(h) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;
(i) Psychiatric medication management with a CPT code of 90852 if provided by:
1. A psychiatrist;
2. A physician;
3. A psychiatric medical resident; or
4. An ARNP;
(j) Interpretation of data to family or others with a CPT code of 90867 if provided by:
1. A psychiatrist;
2. A physician; or
3. An ARNP; or
(k) A neuropsychological status exam with a CPT code of 90816 if provided by:
1. A psychiatrist;
2. A psychologist with a license in accordance with KRS 319.010(5);
(2) The department shall not reimburse for a telehealth service if the service is not medically necessary.
(3) The department shall not reimburse for a service via this administrative regulation if the service requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.
(4) A telehealth service shall require:
(a) The use of two (2) way interactive video;
(b) A referral by a health care provider;
(c) A referral by a recipient’s KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and
(d) A referral by a recipient’s lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:577.
Section 4. Covered Services. (1) Except as restricted in accordance with Section 3 of this administrative regulation, a telehealth service shall be covered if medically necessary.
(2) A telehealth service shall require:
(a) The use of two (2) way interactive video;
(b) A referral by a health care provider specified in Section 4(2) of this administrative regulation;
(c) A referral by a recipient’s KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and
(d) A referral by a recipient’s lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:577.
Section 3. Limitations. (1) Coverage of telehealth services for a provider that is not a community mental health center shall be limited to a maximum of four (4) telehealth services per recipient per year if provided as follows:
(a) For a recipient age twenty-one (21) years and older, the evaluation and management consultation—CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or
(b) For a recipient under the age of twenty-one (21) years:
1. The evaluation and management consultation—CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; and
2. Psychiatric diagnostic evaluation CPT codes 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.
(2) Coverage for a telehealth service for a CMHC shall be limited to 12 telehealth services per recipient per year and shall be billed using the following CPT codes for the following corresponding services:
(a) 30801 for a diagnostic interview examination;
(b) 30862 for medication management;
(c) 30867 for an outpatient collateral;
(d) 30804 for an individual psychotherapy; or
(e) 30847 for an outpatient family therapy.
(3) Coverage shall not be provided for a service that requires face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.
Section 4. Eligible Providers. (1) A medical specialist at a hub site shall be enrolled as a Medicaid provider pursuant to 907 KAR
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1.671 and 907 KAR 1.672 and shall be:
(a) For a provider that is not a community mental health center, a licensed physician in one (1) of the following specialties or subspecialties:
   1. Dermatology;
   2. Emergency medicine;
   3. An internal medicine subspecialty;
   4. General surgery or a surgery subspecialty;
   5. Neurology;
   6. Obstetrics and gynecology;
   7. A pediatric subspecialty;
   8. Psychiatry;
   9. Radiology or radiation medicine, or
   10. A licensed oral surgeon; or
(b) For a CMHC:
   1. A psychiatrist, or
   2. An advanced registered nurse practitioner.
(2) A health care provider requesting a telehealth service shall be an enrolled Medicaid provider who is a:
(a) Licensed physician;
(b) Licensed advanced registered nurse practitioner;
(c) Certified physician assistant working under a physician supervisor;
(d) Licensed dentist or oral surgeon; or
(e) CMHC.

Section 6.[8] Reimbursement. (1) The department shall reimburse a telehealth provider [medical specialist located at a hub site] for a telehealth service:
(a) Except for a service provided by an ARNP or CMHC, an amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3 010, or
(b) If a CMHC, in accordance with 907 KAR 1 045; or
(c) An amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3 104 if provided by an ARNP.
(2) A telehealth provider [medical specialist] shall bill for a service using the appropriate evaluation and management CPT code or ICD code as specified in Section 2 or 3 of this administrative regulation along with the corresponding with the addition of the two (2) letter "GT" modifier.
(3) The department shall not require the presence of a health care provider requesting a telehealth service at the time of the telehealth service unless it is requested by a telehealth provider [medical specialist] at the hub site.
(4) The department shall not reimburse [Reimbursement shall not be made] for transmission costs.

Section 5.[6] Confidentiality and Data Integrity. (1) A telehealth service shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth service information.
(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth service.
(3) A provider of a telehealth service shall implement confidentiality protocols that include:
(a) Identifying personnel who have access to a telehealth transmission;
(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and
(c) Preventing unauthorized access to a telehealth transmission.
(4) A provider’s protocols and guidelines shall be available for inspection by the department upon request.

Section 8.[7] Informed Consent. (1) Before providing a telehealth service to a recipient, a health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:
(a) The recipient shall have the option to refuse the telehealth service at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;
(b) The recipient shall be informed of alternatives to the telehealth service that are available to the recipient;
(c) The recipient shall have access to medical information resulting from the telehealth service as provided by law;
(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth service shall not occur without the written informed consent of the recipient or the recipient’s legally-authorized representative;
(e) The recipient shall have the right to be informed of the parties who will be present at the place site and the hub site during the telehealth service and shall have the right to exclude anyone from either site, and
(f) The recipient shall have the right to object to the video tapping of a telehealth service.
(2) A copy of the signed informed consent shall be retained in the recipient’s medical record and provided to the recipient or the recipient’s legally-authorized representative upon request.
(3) The requirement to obtain informed consent before providing a service shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient’s legally-authorized representative is unavailable.

Section 7.[8] Medical Records. (1) A request for a telehealth service from a [physician or other health care provider [specified in Section (2) of the administrative regulation] and the medical necessity for the telehealth service shall be documented in the recipient’s medical record.
(2) A health care provider shall keep a complete medical record of a telehealth service provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality. In accordance with KRS 194A.060, 422.317, 434.840 – 434.860, and 42 C.F.R. 431.300 to 431.387.
(3) A medical record of a telehealth service shall be maintained in compliance with 907 KAR 1.672.
(4) Documentation of a telehealth service by the referring health care provider shall be included in the recipient’s medical record and shall include:
(a) The diagnosis and treatment plan resulting from the telehealth service and a progress note by the referring health care provider present at the place site during the telehealth service;
(b) The location of the hub site and spoke site;
(c) A copy of the signed informed consent form; and
(d) Documentation supporting the medical necessity of the telehealth service.
(5) [a] A telehealth provider [A medical specialist] diagnosis and recommendations resulting from a telehealth service shall be documented in the recipient’s medical record at the recipient’s location.
(b) A telehealth provider [The medical specialist] shall send a written report regarding a telehealth service to the referring health care provider.

Section 8. Federal Financial Participation. A provision established in the administrative regulation shall be effective contingent upon the department’s receipt of federal financial participation for the respective provision.

Section 9. School-based Telehealth. (1) The provisions of this section shall apply only upon approval of a school-based telehealth program by the Telehealth Board established in KRS 145-660.
(2) Effective through October 31, 2007, the department shall cover a primary care telehealth service delivered by a hub site identified in subsection (3) of this section to a public school spoke site identified in subsection (4) of this section.
(3) The following facilities shall be designated as a hub site for the purposes of this section:
(a) St. Clare Regional Medical Center and its community primary care clinics;
(b) Glasgow Family Practice Residency Program; and
(c) Lewis County Primary Care Center.
(4) The following school sites shall be designated as a spoke site for the purposes of this section:
(a) Bath County Middle School;
(b) Bots Elementary School;
(c) Olive Hill Elementary School;
(d) Rowan County High School;
(e) Rowan County Middle School;
(f) Clearfield Elementary School;
(g) McBryer Elementary School;
(h) Rodburn Elementary School;
(i) Tilden Hagge Elementary School;
(j) North Me抹ol County Elementary School;
(k) Lewis County Middle School;
(l) Godman Elementary School;
(m) Laurel Elementary School;
(n) Tollieboro Elementary School;
(5) Coverage of a primary-care telehealth service delivered by a hub/site identified in subsection (3) of this section to a public school spoke site identified in subsection (4) of this section shall be billed using the following CPT codes for the following corresponding services:
(a) 99201 through 99226 for new patient-office visits;
(b) 99214 through 99218 for established patient-office visits; or
(c) 99241 through 99245 for consultation-office visits.
(6) The department shall remunerate a primary-care telehealth service provided to a public school spoke site at the same rate as a face-to-face consultation.
(7) Total aggregate reimbursement under the telehealth school-based program shall not exceed $100,000 per calendar year.
(8) The department shall not cover a consultation provided by a site not within the telehealth network pursuant to KRS 204.17A-138(1)(a).

Section 10. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:500.
(2) An appeal of a department determination regarding Medicaid eligibility of an Individual shall be in accordance with 907 KAR 1:560.
(3) A provider may appeal a department-written determination (decision) as to the application of this administrative regulation in accordance with 907 KAR 1:671.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 12, 2009
FILED WITH LRC: January 13, 2009 at 8 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the administrative regulation shall, if requested, be held on February 23, 2009 at 9 a.m. in the Cabinet for Health and Family Services, Health Services Board Room, 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 2009, 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 March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen (502) 564-4321
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) provisions relating to telehealth.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS provisions relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS telehealth provisions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS telehealth provisions.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment expands the amount and type of care that can be provided via telehealth; expands the eligible telehealth provider types; establishes that policies are contingent upon the provision of federal financial participation to the department, and deletes the school-based telehealth provisions as they expired October 31, 2007.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enhance recipient access to care as well as to enable DMS to enhance efficiency of care. DMS’s coverage of telehealth prior to this was limited to the point that it did not encourage potential providers to invest in the required technology in order to provide telehealth services. The amendment believes that expanded telehealth coverage, particularly among specialists, will result in recipients receiving accurate diagnoses and corresponding appropriate care sooner in some circumstances. For example, an individual with a dermatological condition in a rural area might repeatedly go to a general provider without being diagnosed accurately. If the individual can be evaluated by a dermatological specialist via telehealth, he or she, could be accurately diagnosed during one encounter. Consequently, emergency room utilization could decrease if individuals are accurately diagnosed, in some circumstances, sooner. Additionally, the enhanced availability of telehealth could potentially reduce transportation costs. The amendment establishes that provisions are effective contingent upon the provision of federal financial participation is necessary to maintain the viability of the Medicaid program as the Centers for Medicare and Medicaid Services (CMS) provides approximately seventy (70) percent of DMS program funding.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes - including KRS 194A.125, 194A.030(1) and KRS 205.559 - by enhancing recipient access to telehealth care and improving the health of Kentuckians including the delivery of "health services in a safe and effective fashion."* (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes - including KRS 194A.125, 194A.030(1) and KRS 205.559 - by enhancing recipient access to telehealth care and improving the health of Kentuckians including the delivery of "health services in a safe and effective fashion."*
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently forty-eight (48) telehealth sites in the Kentucky telehealth network located among thirty-one (31) counties. The provider network is primarily comprised of hospital/health centers but also includes health departments and physicians’ offices among others.
(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 expands telehealth options and does not require new actions of compliance from regulated entities.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-
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section (3). The amendment expands telehealth options and does not impose cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). DMS anticipates that recipients will have enhanced access to care (including specialty care such as dermatology) and that health providers will have expanded opportunity to perform telehealth as a result of the amendment.

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

(a) Initially: DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

(b) On a continuing basis: DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

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

(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 being applied? The administrative regulation does establish a different service limit for certain mental health telehealth in order to preserve consistency with the same care in a face-to-face setting. For example, physicians and ARNP's are limited to four (4) services with a psychiatry CPT code per recipient per year pursuant to 907 KAR 3:005 (Physicians' services). Therefore, this administrative regulation imposes the same limit - four (4) mental health care encounters per recipient per year - if provided by a physician or ARNP via telehealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What unit 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 (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A 010, 194A 000(2), 194A 125, 205 520, 205 559

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for the Department for Medicaid Services (DMS); however, could generate revenue for three local health departments which are in the Kentucky telehealth network (if they provide telehealth covered via this administrative regulation.)

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for the DMS; however, could generate revenue for three local health departments which are in the Kentucky telehealth network (if they provide telehealth covered via this administrative regulation.)

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Family Support
(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.


STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1392e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1392 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for

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payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).
(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind or had a disability.
(3) "Department" means the Department for Community Based Services or its designee.
(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.
(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.
(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.
(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health, Developmental Disabilities, and Addiction (and Mental Retardation) Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.
(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383 to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.
(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.
(3) A mandatory state supplementation payment shall be equal to the difference between:
(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and
(b) The total of the SSI payment; or
2. The total of the SSI payment and other income for the current month.
(4) A mandatory payment shall discontinue:
(a) The needs of the recipient as recognized in December 1973 have decreased, or
(b) Income has increased to the December 1973 level.
(5) The mandatory payment shall not be increased unless:
(a) Income as recognized in December 1973 decreases;
(b) The SSI payment is reduced, but the recipient's circumstances are unchanged, or
(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.
(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:
(a) 907 KAR 1:011, Sections 1(6)(6), 5(5), 6(7), 13(10), and 11;
(b) 907 KAR 1:340, Sections 1(1), 6(7), 11(11), 7(9)-8(42); 3(4)(a);
(c) 907 KAR 1:645;
(d) 907 KAR 1:650, Section 1(7), and
(e) 907 KAR 1:660, Sections 1(1), 5(5), 2(11), 2(3), and 4.
(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:
(a) Furnish a Social Security number; or
(b) Apply for a Social Security number, if a Social Security number has not been issued.
(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.
(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional state supplementation shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:
(a) Requires a full-time living arrangement;
(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and
(c) Resides in a personal care home and is sixteen (16) years of age or older in accordance with 921 KAR 20:036, Section 3(3)(a);
2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 921 KAR 20:041, Section 3(14); or
3. Receives caretaker services and is at least eighteen (18) years of age.
(2) A full-time living arrangement shall include:
(a) Residence in a personal care home that:
1. Meets the requirements and provides services established in 902 KAR 20:036; and
2. Is licensed under KRS 216B.010 to 216B.131; or
(b) Residence in a family care home that:
1. Meets the requirements and provides services established in 902 KAR 20:041; and
2. Is licensed under KRS 216B.010 to 216B.131; or
(c) A situation in which a caretaker is required to be hired to provide care other than room and board.
(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the month after the month of:
1. Discharge to a;
as a nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or
b. Residence; or
d. Death of the state supplementation recipient; and
(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.
(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.
(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
(a) Return the check to the Kentucky State Treasurer, the month after the month of:
1. Discharge to a:
as a nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or
b. Another personal care or family care home; or
c. Residence; or
d. Death of the state supplementation recipient; and
(b) Notify a local county department within five (5) working days of the:
1. Death or discharge of the state supplementation recipient; or
(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)(2) of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.
(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a
caretaker shall be provided to enable an adult to:
(a) Remain safely and adequately;
1. At home;
2. In another family setting; or
3. In a room and board situation; and
(b) Prevent Institutionalization.
(c) Service by a caretaker shall be provided at regular intervals by:
(a) A live-in attendant; or
(b) One (1) or more persons hired to come to the home.
(3) Eligibility for caretaker supplementation shall be verified annually by the caretaker to establish how:
(a) Often the service is provided;
(b) The service prevents Institutionalization; and
(c) Payment is made for the service.
(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
(a) Client is taken daily or periodically to the home of the caretaker;
(b) Caretaker service is provided by the following persons living with the applicant:
   1. The spouse;
   2. Parent of an adult or minor child who has a disability; or
   3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:
(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), (17), (8), (12);
(b) 907 KAR 1:645;
(c) 907 KAR 1:650, Section 1(7); and
(d) 907 KAR 1:650, Sections 1(1), (6), (2)(1), (2), (3), and (4).
(2) An individual or couple shall not be eligible if countable resources exceed the limit of:
(a) $2000 for individual; or
(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:
(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), (17), (8), (12);
(b) 907 KAR 1:645;
(c) 907 KAR 1:650, Section 1(7); and
(d) 907 KAR 1:650, Sections 1(1), (6), (2)(1), (2), (3), and (4).
(2) The optional supplementation payment shall be determined by:
(a) Adding:
   1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
   2. A payment made to a third party on behalf of an applicant or recipient; and
(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.
(3) Income of an ineligible spouse shall be:
(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
   1. Himself; and
   2. Each minor dependent child.
(4) Income of an eligible individual shall not be considered in the calculation of the income of an ineligible spouse or minor dependent child.
(5) Income of a child shall be conserved if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.
(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.
(7) If treating a husband and wife who reside in the same per-sonal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.
(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.
(9) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.
(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:
(a) For a resident of a personal care home on or after January 1, 2009, $1,194 [2009 $1,197];
(b) For a resident of a family care home on or after January 1, 2009, $316 [2009 $318];
(c) For individuals who receive caretaker services:
   1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2009, $733 [2009 $733];
   2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2009, $1,072 [2009 $1,047]; or
   3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2009, $1,126 [2009 $1,141].
(2) (a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.
   (b) One-half (1/2) of the deficit shall be payable to each.
(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.
(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a thirty (30) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:
(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;
(b) Social Security Administration notifies the department that the admission shall be temporary; and
(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.
(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:
(a) The non-SSI recipient meets the requirements of subsection 1(c) of this section;
(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:
   1. Notification of the temporary admission; and
   2. The physician statement specified in paragraph (b) of this subsection.
(3) A temporary admission shall be limited to the following health care facilities:
(a) Hospital;
(b) Psychiatric hospital; or
(c) Nursing facility.
(4) If a state supplementation recipient is discharged in the
month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be:
(1) Citizen of the United States; or
(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home
(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplement recipient in the personal care home's care as of the first calendar day of a qualifying month
(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and
(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:
1. Be licensed in accordance with KRS 216B.010 to 216B.131;
2. Care for a population that is thirty-five (35) percent mental illness or mental retardation clients in all of its occupied licensed personal care home beds and who have a:
   a. Primary or secondary diagnosis of mental retardation including mild or moderate; or other ranges of retardation whose needs can be met in a personal care home;
   b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimers', and similar diagnoses; or
   c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;
4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;
5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and
6. File an [STS-1, Mental Illness or Mental Retardation (M/MR) Supplement Program Application for Benefits][1] with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.
   a. Quarter shall begin in January, April, July and October.
   b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.
(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.
(3) The department shall mail an [STS-2, Mental Illness or Mental Retardation (M/MR) Supplement Program Notice of Decision to Personal Care Home][2] to a personal care home following:
   (a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulator; and
   (b) Approval or denial of an application.
(4) A personal care home shall:
   (a) Provide the department with an [STS-3, Mental Illness or Mental Retardation (M/MR) Supplement Program Monthly Report Form][3] that:
      1. Lists every resident of the personal care home who was a resident on the first day of the month;
      2. Lists the resident's Social Security number; and
      3. Announces the form, in order to maintain confidentiality, as follows with:
         a. Star indicating a resident has a mental illness or mental retardation diagnosis;
         b. Check mark indicating a resident receives state supplementation; and
         c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and
   (b) Mail the STS-3 to the department postmarked by the fifth working day of the month.
   (5) The monthly report shall be used by the department for:
      (a) Verification as specified in subsection (4)(a) of this section;
      (b) Payment; and
      (c) Audit purposes.
   (6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.
   (b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health, Developmental Disabilities, and Addiction and Mental Retardation Services.
   (b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.
   (2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:
      (a) Importance of proper medication administration;
      (b) Side effects and adverse medication reactions with special attention to psychotropics;
      (c) Signs and symptoms of an acute onset of a psychiatric episode;
      (d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;
      (e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and
      (f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.
   (3) Initial basic training shall:
      (a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and
      (b) Be in the quarter during which the STS-1 is filed with the department.
   (4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.
   (a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.
   (b) A personal care home shall have on staff an licensed nurse or individual who:
      1. Has successfully completed certified medication technician training; and
      2. Has received mental illness or mental retardation basic training or
      b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.
   (5) The Department for Mental Health, Developmental Disabilities, and Addiction and Mental Retardation Services may provide advanced level training for a personal care home.
      (a) Advanced level training shall be provided through a one (1) day workshop.
      (b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.
      (c) Each three (3) hour sessions shall cover a topic appropriate
for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(e) The Department for Mental Health, Developmental Disabilities, and Addiction [and Mental Retardation] Services shall provide within five (5) working days:

(a) Certificates to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(f) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to an individual care home:

(a) That has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(g) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)(2) of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(d) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

(a) Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

(b) Maintains documentation of attendance at the In-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

(a) Demonstrates a knowledge of psychotropic drug side effects; and

(b) Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident:

(a) If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

(b) An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

3. The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

4. If thirty-five (35) percent of the population is mental illness or mental retardation clients, as specified in Section 12(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

5. If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

6. The Office of Inspector General shall provide the department with a completed "[STS-3, Mental Illness or Mental Retardation (M/MR) Supplement Certification Survey] within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

7. The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

8. The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

9. If a criterion for certification is not met, the department shall mail an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (5) of this section.

10. The personal care home shall provide the department with the requested information on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-2; and

(b) Within ten (10) working days after the STS-2 is mailed.

11. If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

12. If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or decision of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Mental Retardation (M/MR) Supplement Program Application for Benefits," edition 1/09/04/07;

(b) "STS-2, Mental Illness or Mental Retardation (M/MR) Supplement Program Notice of Decision to Personal Care Home," edition 1/09/04/07;

(c) "STS-3, Mental Illness or Mental Retardation (M/MR) Supplement Program Monthly Report Form," edition 1/09/04/07; and

(d) "STS-4, Mental Illness or Mental Retardation (M/MR) Supplement Certification Survey," edition 1/09/04/07.

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2006

FILED WITH LRC: December 22, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 2009, 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 March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deannger, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplementation Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind or have a disability and its compliance with an agreement with the Department of Health and Human Services to pass along the Supplemental Security Income cost of living adjustment to State Supplementation recipients.

(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 eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind or have a disability.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulations by increasing the standards of need for all levels of care in the State Supplementation Program for persons who are aged, blind or have a disability. This increase reflects the cost of living adjustment to be implemented in calendar year 2009 by the Social Security Administration for Supplemental Security Income (SSI) recipients. The amendment also makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state’s Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2008. Technical corrections were necessitated to promote clarity and reflect organizational changes and other recent regulatory amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment for Supplemental Security Income to State Supplementation Program through an increase in the program’s standard of need for all recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the 2009 5.8% cost of living adjustment for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and making other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of July 2008, there were 4,143 recipients of State Supplementation Program 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: The payment to a resident of a Personal Care Home is $1,194 minus the personal care allowance of $50 for the recipient. The payment to a resident of a Family Care Home is $846 minus the personal care allowance of $40 for the recipient. The payment to a caretaker of a single person is $736. The payment to a caretaker of a couple, one requiring care, is $1,072. The payment to a caretaker of a couple, both requiring care, is $1,126. In all instances the State Supplementation payment made is the difference between the applicable standard of need and the countable income of the recipient.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) or their care providers?

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will realize the 5.8% cost of living adjustment implemented by the Social Security Administration.

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

(a) Initially: Although Kentucky will pass along the 5.8% federal cost of living adjustment by increasing the State Supplementation Program’s standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2009 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase.

(b) On a continuing basis: Although Kentucky will pass along the 5.8% federal cost of living adjustment by increasing the State Supplementation Program’s standards of need, there will be no fiscal impact for the Cabinet for Health and Family Services to implement the mandated pass along of the 2009 SSI cost of living adjustment. Rather, recipients of the State Supplementation Program benefit will realize the federal SSI increase. Federal Funds/Agency Funds are used to fund the State Supplementation Program’s benefits.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish any fees. No increase in fees or funding is necessary to implement this administrative regulation.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1382-e-g
2. State compliance standards. KRS 194A 050 (1), 205.245
3. Uniform or uniform standards contained 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. None
implied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205 245, 42 U.S.C. 1382a-g
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate 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 State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate any additional revenue in subsequent years.
   (c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.
   (d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program during subsequent years.
   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

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

921 KAR 4:116. Low Income Home Energy Assistance Program or “LIHEAP”.

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance.

Section 1. Definitions. (1) "Agency" means [Kentucky Association for Community Action Kentucky (KAC) or "KAC"] or a local community action agency contracted to provide LIHEAP.
(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.
(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household’s behalf.
(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating crisis.
(5) "Economic unit" means one (1) or more persons sharing common living arrangements.
(6) "Emergency" means, at the time of application, the household:
   (a) is without heat;
   (b) Will be disconnected from a utility service within forty-eight (48) hours;
   (c) Will be without fuel within four (4) days; or
   (d) Without cooling as specified in Section 3 of this administrative regulation.
(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.
(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.
(9) "Heating season" means the period from October through April.
(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.
(11) "Household demographics" means an applicant’s:
   (a) Address;
   (b) House composition that includes:
      1. Size;
      2. Age group;
      3. Relationship to applicant;
      4. Sources of income;
      5. Liquid assets; and
      6. Type of housing; and
   (c) Heat source.
(12) "Level of poverty" or "poverty level" means the degree to which a household’s gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9002(2).
(13) "Life-threatening situation" means, at the time of application, a household is or shall be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.
(14) "Poverty level" means the "level of poverty", as defined in subsection 12 of this section.
(15) "Principal residence" means the place:
   (a) Where a person is living voluntarily and not on a temporary basis;
   (b) An individual considers home;
   (c) To which, when absent, an individual intends to return; and
   (d) Is identifiable from another residence, commercial establishment, or institution.
(16) "Subsidy component" means the heating component that provides an eligible household with:
   (a) A one (1) time annual payment to the household’s energy provider; or
   (b) Payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:
   (a) Proof of household income;
   (b) Statement of liquid resources;
   (c) Most recent:
      1. Heating bill;
      2. Cooling bill; or
      3. Verification that heating or cooling is included in the rent;
   (d) Statement of household demographics; and
   (e) A Social Security number, or a permanent residency card, for each household member.
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(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(2) Liquid assets.
(a) The household shall have total liquid assets at time of application of not more than:
1. $2,000
2. $3,000 if at least one (1) member in the household is:
   a. Age sixty (60) or older; or
   b. Disabled; or
3. $4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.
(b) An excluded asset shall be:
1. A vehicle;
2. Household goods;
3. Personal effects;
4. [Household or personal belonging;]
5. A principal residence;
6. [Insurance policy;]
7. [Cash surrender value of an insurance policy;]
8. [A prepaid burial policy;]
9. [A real property;]
10. [Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.]

(3) The household shall be responsible for paying:
(a) Home heating;
(b) Cooling costs; or
(c) Heating or cooling costs as an undesignated portion of the rent.

(4) Crisis component. In addition to meeting the criteria in subsections (1) through (3) of this section, an applicant shall:
(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;
(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat source; or
(c) Have received a notice of eviction for nonpayment of rent, if home heating cost is included as an undesignated portion of the rent.

(5) Summer cooling component. In addition to meeting the criteria in subsections (1) through (3) of this section, to be eligible to receive a window air conditioner unit, an applicant shall:
(a) Be without an adequate source of cooling; and
(b) Have a household member who:
   1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician’s statement prepared on the physician’s letterhead;
   2. Is sixty-five (65) years of age or older; or
   3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household’s heating fuel provider shall be made for the full benefit amount as follows:
(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and an average heating season energy cost for the six (6) primary heating fuels.
(b) The amount of benefits shall be based upon household income and type of heating fuel used.
(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.
(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.
(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.
(f) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating crisis. A household living in federally assisted housing may be eligible.
(a) A benefit may be:

1. Fuel or other energy source for heating;
2. A space heater loaned on a temporary basis until:
   a. Fuel is delivered; or
   b. Another resource is located to alleviate the crisis;
3. A blanket or sleeping bag; or
4. Emergency shelter;
(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.
(c) A household may receive assistance more than once (1) time, but shall not receive more than the maximum allowable for the primary heating fuel, minus a required copayment. The maximum allowable benefit shall equal cost for delivery up to:
   1. Two (2) tons of coal;
   2. Two (2) cords of wood;
   3. 200 gallons of propane;
   4. 200 gallons of fuel oil;
   5. 200 gallons of kerosene; or
   6. a. $400 for natural gas or electric, effective January 1, 2009;
e. b. $250 for natural gas or electric, effective July 1, 2009, unless:
   (i) Program funding is enhanced through a federal or state award; and
   (ii) The cabinet approves an increase to the benefit amount.
(d) A household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel.
(e) An eligible household, including a household residing in:
   1. Subsidized or nonsubsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.
   2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.
(f) The copayment amount required by paragraph (e) of this subsection shall be based on housing type and the household’s percentage of poverty, as follows:

<table>
<thead>
<tr>
<th>Percent Of Poverty</th>
<th>Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing</th>
<th>Copayment Percentage of Benefit for Households Residing in Subsidized Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-74%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>75-100%</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>101-130%</td>
<td>15%</td>
<td>20%</td>
</tr>
</tbody>
</table>

(3) For cooling component benefits, a household shall be eligible for:
(a) A one (1) time annual payment to the household’s:
   1. Electric utility provider; or
   2. Landlord, if the cost of cooling is included as an undesignated portion of the rent;
(b) A window air conditioner unit, if:
   1. Criteria in Section 3(5) of this administrative regulation are met; and
   2. The agency has the funding to purchase a window air conditioner unit or has a window air conditioner unit available for the household; and
(c) Benefits based on:
   1. The household’s level of poverty; and
   2. A subsidized housing with:
      (i) Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or
      (ii) Seventy-five (75) percent to one hundred (100) percent of poverty receiving up to seventy-five (75) dollars; or
     b. Nonsubsidized housing with:
        (i) Zero to seventy-four (74) percent of poverty receiving up to $175; or
        (ii) Seventy-five (75) percent to one hundred (100) percent of poverty receiving up to $225.

Section 5. Benefit Delivery Methods (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household’s:
1. Energy provider; or
2. Landlord, if the cost of heating is included as an undesignated portion of rent.

(a) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(b) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:
   (a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;
   (b) A vendor who supplies a heater, blanket, or emergency lodging;
   (c) A landlord, if heating cost is included in the rent.

(c) For the cooling component, cash benefits shall be paid to:
   (a) Household's electric utility provider; or
   (b) Landlord, if cooling cost is included in the rent.

Section 6. Right to a Fair Hearing (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held In accordance with 921 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:
   1. Allow agency and authorized federal or state representatives to inspect records upon request;
   2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;
   3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;
   4. Provide fuel as specified and at the price quoted;
   5. Comply with federal and state law pertaining to equal employment opportunity;
   6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:
   1. Eighteen (18) hours for a life-threatening situation; or
   2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that:
   (a) Crisis situation is resolved within forty-eight (48) hours; or
   (b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 100 percent of the poverty level.

(b) $400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet.

(c) $25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed $300 for each family per the payment:
   (a) Prevents the removal of a child from the family; or
   (b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 6824(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

JANIE MILLER, Secretary
APPROVED BY AGENCY: December 12, 2006
FILED WITH LRC: December 22, 2008 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 23, 2009 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 2009, 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 March 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Jit Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, OCBS Regulation Coordinator
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky’s LIHEAP program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has responsibility under 42 U.S.C. 8621 to implement the LIHEAP program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility and benefits criteria for the implementation of LIHEAP.
(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 modifies the maximum utility benefit payable under the LIHEAP crisis component from $250 to $400 for households whose heat is provided through natural gas and electric. The increased benefit amount will sunset on July 1, 2009, unless program funding is enhanced through federal or state award, and the cabinet approves a subsequent increase above $250. The amendment also clarifies assets excluded during eligibility determination and provides further clarification that $400,000 is available for crisis contingency funds based upon need approved in advance by the cabinet. The amendment makes technical corrections to comply with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement enhanced federal funding, effect programmatic recommendations from the Cabinet for Health and Family Services, and ensure maximum utility benefit payable for clients to better realize and respond to actual heating costs.

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (H.R. 2639) allocated additional federal funds to Kentucky’s LIHEAP program for Federal Fiscal Year 2009. The increase in utility benefit is necessary to make certain the federal funds are expended within the federal year. Also, the increase in benefits will ensure that the LIHEAP crisis component better meets the actual heating costs seen by eligible low income households as a result of recent utility cost increases.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of 42 U.S.C. 8621 by clarifying excluded assets and increasing the crisis component benefit for natural gas and electric, to better reflect actual heating cost increases.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by allowing the cabinet and its partners, in their implementation of LIHEAP, to better serve vulnerable households with an increased utility benefit under the crisis component and an increase in the preventive assistance fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits to Kentucky’s 120 counties. Last year, Kentucky served approximately 173,840 households under the LIHEAP. Of those 173,840, approximately 106,541 households were served under the LIHEAP subsidy component, and 67,299 were served under the LIHEAP crisis component. This amendment and the additional funds provided under the continuing resolution will allow the cabinet and its partners to serve an additional 40,000 households under the crisis component in winter 2009.
(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: As a result of this amendment, Kentucky’s Community Action Network will be able to extend more benefits and services to low income households. The extension for winter 2009 will promote stability and living standards for households who, for instance, are transitioning from welfare to work, contain a child at risk for maltreatment, or have a household member who has a disability or is elderly. The increase in benefits for households whose heating source is natural gas or electric will also better reflect increases in actual heating costs.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. This amendment will not require any additional actions on the part of the LIHEAP applicant or participants.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Neither the amendment nor the administrative regulation involves a cost to LIHEAP applicants or participants.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All natural gas and electric applicants and participants will benefit from the amendment to this administrative regulation by receiving an increased utility assistance benefit.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: In LIHEAP program for FFY 2009, $24,326,305 in additional funding is required (and federally awarded) for the enhanced crisis component benefit for households whose energy source is natural gas or electric.
(b) On a continuing basis: The U.S. Department of Health and Human Services allocates LIHEAP funding annually to states. The enhanced benefit amount for natural gas and electric households will expire July 1, 2009, unless program funding is enhanced through a federal or state award, and the cabinet approves a subsequent increase to the $400 benefit amount. The cabinet will administer and implement LIHEAP in Kentucky within federal and state appropriations.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation for the LIHEAP program will be 100% federally funded
(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: Any initial increase in funding was provided through the enactment of the continuing resolution of 2009. The cabinet will implement and enforce this administrative regulation in subsequent years within any federal and state appropriations for the LIHEAP.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish any fees.
(9) TIERING: Is tiering applied? Tiering has not been applied, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 8621
2. State compliance standards. KRS 194A.010, KRS 194A.050
3. Minimum or uniform standards contained in the federal mandate 42 U.S.C. 8621
4. Will this administrative regulation impose stricter require-

- 1938 -
ments, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 6621-6627, 42 U.S.C. 9902(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government during the first year.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government in subsequent years.
   (c) How much will it cost to administer this program for the first year? In LIHEAP program for FFY 2009, $24,385,000 in additional funding is required (and federally awarded) for the enhanced crisis component benefit for households whose energy source is natural gas or electric.
   (d) How much will it cost to administer this program for subsequent years? The U.S. Department of Health and Human Services allocates LIHEAP funds on an annual basis. The new natural gas and electric benefit rate expires on July 1, 2009, unless funding is enhanced through a federal or state award and the cabinet appropriates the continuance of the new benefit rate. The cabinet will administer and implement LIHEAP in Kentucky within federal funds and any state appropriations.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:105. 401(h) account established under 26 U.S.C. 401(h).

RELATES TO: KRS 161.675; KRS 161.420
STATUTORY AUTHORITY: KRS 161.310, KRS 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310

requires the Board of Trustees of Kentucky Teachers' Retirement System to promulgate all administrative regulations for the administration of the funds of the retirement system and for the transaction of business, KRS 161.716 requires the Board of Trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Pursuant to the provisions of KRS 161.420(5), there is hereby confirmed a separate 401(h) account established under 26 U.S.C. 401(h).

Section 1. Definitions. (1) "Dependent" is defined by the Internal Revenue Code, 26 U.S.C 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).

(2) "Medical expense" means expense for medical care as defined by 26 U.S.C. Section 213(a)(1) of the Internal Revenue Code.

(3) "Retired", for purposes of eligibility to receive medical benefits described in 26 U.S.C. 401(h), means:
(a) An employee is eligible to receive benefits under the System;
(b) The employee is not still employed by the employer; and
(c) A separation from employment has occurred.

(4) "System" means the retirement system administered by the Kentucky Teachers' Retirement System.

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) shall be to pay part of the subsidy for health benefits that are otherwise payable from the Medical Insurance Fund.

Section 3. The mandatory employer contribution established by KRS 161.420(5) shall be deposited in the Medical Insurance Fund.

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the System. (Life insurance protection shall not be provided by the System, except death benefits payable under KRS 161.655.) This requirement shall not be satisfied unless the actual contributions to the 401(h) account established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the System (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) account established under 26 U.S.C. 401(h).

Section 5. Amounts in the 401(h) account established under 26 U.S.C. 401(h) are for the exclusive purpose of paying medical expenses for a retiree, his spouse, and any dependents. Amounts in the 401(h) account established under 26 U.S.C. shall not be diverted for any other purpose.

Section 6. Any amount in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employer upon satisfaction of all liabilities for medical benefits.

Section 7. An employee shall not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 8. The 401(h) account established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust fund for investment purposes. Investment earnings shall be credited to the 401(h) account established under 26 U.S.C. 401(h) on a reasonable basis.

Section 9. Administrative and other expenses shall be charged to the 401(h) account established under 26 U.S.C. 401(h) on a reasonable basis.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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 March 2, 2009. 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: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-6506, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert B. Barnes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation confirms a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the mandatory employee contribution to be made by members of the system administered by Kentucky Teachers' Retirement System.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the mandatory employee contribution to be made by members of all of the system administered by Kentucky Teachers' Retirement System.
(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 a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the mandatory employee contribution to be made by members of the system administered by Kentucky Teachers' Retirement System.
(d) How this administrative regulation currently assists or will assist in the effective administration of the regulations: This administrative regulation currently assists in the effective administration of the regulations by confirming a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the mandatory employee contribution to be made by members of all of the system administered by Kentucky Teachers' Retirement System.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the regulations: Not applicable, this is a new administrative regulation.
(3) List the type and number of individual, businesses, organizations, or state and local governments affected by this administration.
tive regulation: None. This administrative regulation merely
confirms the account to hold the mandatory employee contributors
will be held in a 401(h) account under 26 U.S.C. Section 401(h).

(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: N/A
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): N/A
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There is no cost to implement the regulation.
(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Ad-
motivational expenses of the retirement system are paid by trust
and agency funds.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: There is no
increase in fee or funding required.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
regulation does not establish any fees or directly or indirectly in-
crease any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all
members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
   service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? No

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

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

4. Estimate the effect of this administrative regulation on the
   expenditures and revenues of a state or local government agency
   (including cities, counties, fire departments, or school districts) for
   the first full year the administrative regulation is 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?
   (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?
   (c) How much will it cost to administer this program for the first
   year?
   (d) How much will it cost to administer this program for subse-
   quent 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:

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System
(New Administrative Regulation)
102 KAR 1:170. Minimum distribution.
RELATES TO: KRS 161.155, 161.470, 161.520, 161.522,
161.525, 161.569, 161.620, 161.630, 161.640, 161.650, 161.661,
161.663, 26 C.F.R. 1.401(a)(9)-0.1.401(a)(9)-9, 26 U.S.C.
401(a)(9).

STATUTORY AUTHORITY: KRS 161.310, KRS 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310
requires the Board of Trustees of Kentucky Teachers’ Retirement
System to promulgate all administrative regulations for the admin-
istration of the funds of the retirement system and for the transac-
tion of business. KRS 161.716 requires the Board of Trustees to
promulgate administrative regulations as are necessary to remove
any conflicts with federal laws and to protect the interests of the
members and survivors of the members of the retirement system.
This administrative regulation implements the statutory require-
ments of KRS 401(a)(9), which is codified at 26 U.S.C.
401(a)(9), and are meant to be a reasonable good faith interpre-
tation of those statutory requirements. This administrative regulation
establishes minimum distribution requirements in compliance with

Section 1. Definitions. (1) "Member" means a member of a
retirement fund established in accordance with KRS 161.220 to
161.390 and administered by the Kentucky Teachers’ Retirement
System.

(2) *"Required beginning date" means April 1 of the calendar
year following the later of:
(a) The calendar year in which the member attains age seventy
and one-half (70 1/2); or
(b) The calendar year in which the member retires.

Section 2. (1) This administrative regulation shall apply to any
member of a fund established in accordance with KRS 161.230.

(2) Kentucky Teachers’ Retirement Systems shall pay all ben-
efits in accordance with a good faith interpretation of the require-
ments of 26 U.S.C. 401(a)(9) and the Code of Federal Regulations
in effect under that section, as applicable to a governmental plan
within the meaning of 26 U.S.C. 414(d). The requirements of 26
U.S.C. 401(a)(9) shall take precedence over any inconsistent pro-
visions of KRS 161.220 to 161.990.

(3) The member’s entire interest shall be distributed over the
member’s life or lives of the member and a designated beneficiary,
or over an period not extending beyond the life expectancy of the
member or of the member and a designated beneficiary.

Section 3. (1) Except as provided in subsection (2) of this sec-
tion, the member’s entire interest shall be distributed, or begin to
be distributed, to the member no later than the member’s required
beginning date.

(2) If the member dies before distribution begins, the member’s
entire interest shall be distributed, or begin to be distributed, no
later than as follows:
(a) Except as provided in subsection (3) of this section, if the
member’s surviving spouse is the member’s sole designated bene-
ficiary, distributions to the surviving spouse shall begin by the later of:
   (a) December 31 of the calendar year immediately following the
   calendar year in which the member died, or
   (b) December 31 of the calendar year in which the member
   would have attained age seventy and one-half (70 1/2),
(b) If the member’s surviving spouse is not the member’s sole
designated beneficiary, distributions to each designated beneficiary
shall begin by December 31 of the calendar year immediately fol-
lowing the calendar year in which the member died; or
(c) If there is no designated beneficiary as of September 30 of
the year following the year of the member’s death, the member’s
entire interest shall be distributed by December 31 of the calendar
year containing the fifth anniversary of the member’s death; or
(3) If a member dies after the required distribution of benefits
has begun, the remaining portion of the member’s interest shall be
distributed at least as rapidly as under the method of distribution
before the member’s death.

(4) For purposes of Section 3(2) and (3) and Section 6 of this
administrative regulation, distributions shall be required to be
distributed on the member’s required beginning date.
(a) If annuity payments irrevocably commence to the member
before the member’s required beginning date, or to the member’s
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surviving spouse before the date distributions are required to begin to the surviving spouse pursuant to subsection (2)(a) of this section, the date distributions are considered to begin shall be the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments pursuant to the annuity shall satisfy the following requirements:
(a) The annuity distributions shall be paid in monthly periodic payments;
(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in this section or Section 5 or 6 of this administrative regulation;
(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and
(d) Payments shall increase only as follows:
1. By the annual percentage increase provided for pursuant to KRS 161.630(5) and (6);
2. To the extent of the reduction in the amount of the member’s payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in this section dies as provided under KRS 161.630(1) and 102 KAR 1:150, Sections 2 through 7, or if the beneficiary is the member’s spouse and they divorce as provided in KRS 161.630(2)(a);
3. To provide cash refunds of employee contributions upon the member’s death;
4. To pay any increased benefits that result from a plan amendment.

(2)(a) The amount that shall be distributed on or before the member's required beginning date, or if the member dies before distributions begin, the date distributions are required to begin under Section 3(2) of this administrative regulation, shall be the payment that is required for one (1) month.

(b) The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

(c) All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the member's required beginning date.

Section 5. (1) The amount of annuity paid to a member's beneficiary shall not exceed the maximum determined under the incidental death benefit requirement of 26 U.S.C. 401(a)(9)(G), and the minimum distribution incidental benefit rule under 28 C.F.R. 1.401(a)(9)-6.

(2) The death and disability benefits provided by Kentucky Teachers' Retirement System shall be limited by the Incidental benefit rule set forth in 26 U.S.C. 401(a)(9)(g) and 26 C.F.R. 1.401-1(b)(1)(i) or any successor law. As a result, the total death or disability benefits payable shall not exceed twenty-five (25) percent of the cost of all of the members' benefits received from Kentucky Teachers' Retirement System.

(a) Unless the member’s spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member’s lifetime shall not exceed the applicable distribution period for the member pursuant to the uniform lifetime table established in 26 C.F.R. section 1.401(a)(9)-9 for the calendar year that contains the annuity starting date.

(b) If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member shall be the distribution period for age seventy (70) under the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 plus the excess of seventy (70) over the age of the member as of the member’s birthday in the year that contains the annuity starting date.

(c) If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain shall not exceed the longer of the member’s applicable distribution period, as determined pursuant to this subsection, or the joint life and last survivor expectancy of the member and the member’s spouse as determined pursuant to the joint and last survivor table established in 26 C.F.R. 1.401(a)(9)-9, using the member's and spouse's attained ages as of the member's and spouse’s birthdays in the calendar year that contains the annuity starting date.

Section 6. (1) If the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning no later than the time established in Section 3(2)(a) or (b) of this administrative regulation, over the life of the designated beneficiary or over a period certain not exceeding:
(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary’s age as of the beneficiary’s birthday in the calendar year immediately following the calendar year of the member’s death;
(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary’s age as of the beneficiary’s birthday in the calendar year that contains the annuity starting date.

(2) If the member dies before the date distribution of his or her interest begins, the member’s surviving spouse is the member’s sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section shall apply as if the surviving spouse were the member, except that the time by which distributions are required to begin shall be determined without regard to Section 3(2)(a) of this administrative regulation.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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 March 2, 2009. Send written comments to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 846-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and qualifications for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Retirement Systems to maintain its status as a public defined benefit plan under 26 U.S.C. 401(a).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide procedures for determining the required minimum distributions to be made in accordance with 26 U.S.C. 401(a)(9).

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(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.
(e) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: All members of Kentucky Teachers’ Retirement System who are required to take minimum distributions of their accounts.
(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: NA
(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 members.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal law.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this regulation.
(b) On a continuing basis: There is no continuing cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from trust and agency funds.
(h) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.
(i) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This regulation does not establish any fees directly or indirectly increase any fees.
(j) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FINANCIAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9 and 26 U.S.C. 401(a)(9)
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations)
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System
(New Administrative Regulation)

102 KAR 1:225. General compliance with federal tax laws.

RELATES TO: KRS 161.716, 26 U.S.C. 401(a)(7),(8), (25), 414(d), (p), (u), 503(b)

STATUTORY AUTHORITY: KRS 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Kentucky Teachers’ Retirement System to promulgate all administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the Board of Trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Kentucky Teachers’ Retirement System shall administer the Retirement System as a qualified defined benefit plan pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, regulations and such other Internal Revenue Code Sections as applicable. This administrative regulation establishes Kentucky Teachers’ Retirement System’s compliance with 26 U.S.C 401(a) and 26 U.S.C. 503(b) in order for the Kentucky Teachers’ Retirement System to maintain its tax qualified status as a public defined benefit plan.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for vesting and forfeitures. (1) A plan member shall be 100% vested in the member’s accumulated contributions at all times. (2) In conformity with 26 U.S.C. 401(a)(8), any forfeiture of benefits by any member or former member of the plan shall not be used to pay benefit increases. However, these forfeitures shall be used to reduce employer contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited
Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Teachers' Retirement System shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; these benefits shall not be subject to employer discretion.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2009
FILED WITH LFC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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 March 2, 2009. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Kentucky Teachers' Retirement System compliance with 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b) in order for the Retirement System to maintain its tax qualified status as public defined benefit plan under 26 U.S.C Section 401(a).
(b) The necessity of this administrative regulation. This administrative regulation is necessary to establish Kentucky Teachers' Retirement System compliance with 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u), 26 U.S.C. Section 503(b) in order for the Retirement System to maintain its tax qualified status as public defined benefit plan under 26 U.S.C Section 401(a).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes because it establishes Kentucky Teachers' Retirement System compliance with 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u), 26 U.S.C. Section 503(b) in order for the Retirement System to maintain its tax qualified status as public defined benefit plan under 26 U.S.C Section 401(a).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Teachers' Retirement System compliance with 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. Section 414(d),(p),(u); 26 U.S.C. Section 503(b) in order for the Retirement System to maintain its tax qualified status as public defined benefit plan under 26 U.S.C Section 401(a).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much 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?
(d) How much will it cost to administer this program for the first year?

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C Section 401(a)(7),(8), (25); 26 U.S.C. Section
414(d)(p),(u); 26 U.S.C. Section 503(b)
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutory and administrative regulations).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(NEW ADMINISTRATIVE REGULATION)

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 161.220 to 161.990, and 25 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)
STATUTORY AUTHORITY: KRS 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Kentucky Teachers' Retirement System to promulgate all administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the Board of Trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a).

Section 1. "Eligible rollover distribution" shall include any distribution of all or any portion of the balance to the credit of the distributee, except:
(1) Any distribution that is one of a series of substantially equal periodic payments made at least annually;
(a) For the life or life expectancy of the distributee and the distributee’s designated beneficiary,
(b) The joint lives or joint life expectancy of the distributee and the distributee’s designated beneficiary;
(c) For a specified period of ten (10) years or more;
(2) Any distribution to the extent such distribution is required under 26 U.S.C. 401(a)(9), except as provided in Section 2 of this administrative regulation;
(3) The portion of any distribution that is not includible in gross income;
(4) Any other distribution that is reasonably expected to total less than $200 during the year.

Section 2. (1) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, this portion may be transferred only to:
(a) An individual retirement account or annuity described in 26 U.S.C. 408(a) or (b);
(b) A qualified defined contribution plan described in 26 U.S.C. 401(a); or
(c) An annuity contract described in 26 U.S.C. 403(b); and
(d) An account or plan provided for in Section 2(1)(a)(2)-4 of this administrative regulation that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution:
1. That is includible in gross income; and
2. That is not so includible.
(2) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).
(3) "Eligible retirement plan" shall include any of the following that accepts the distributee’s eligible rollover distribution:
(a) An individual retirement account described in 26 U.S.C. 408(d)(1); and
(b) An individual retirement annuity described in 26 U.S.C. 408(b);
(c) An annuity plan described in 26 U.S.C. 403(a);
(d) A qualified trust described in 26 U.S.C. 401(a);
(e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b);
(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or
(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.
(4)(a) "Distributee" shall include an employee or former employee and the following:
1. The employee’s or former employee’s surviving spouse; and
2. The employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).
(b) Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary who is a designated beneficiary as defined in 26 U.S.C. 401(e)(9). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity. "Direct rollover" shall include a payment by the plan to the eligible retirement plan specified by the distributee.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2009, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be produced 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 March 2, 2009. 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: Robert B. Barnes, Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines eligible rollover distributions, eligible retirement plans, distributions, and direct rollover for purposes of compliance with federal tax law.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to define eligible rollover distributions, eligible retirement plans, distributions, and direct rollover for purposes of compliance with federal tax law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Teachers’ Retirement to maintain its tax qualified

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status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by defining eligible rollover distributions, eligible retirement plans, distributions, and direct rollover for purposes of compliance with federal tax law.

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who become eligible to withdraw their contributions and decide to rollover or transfer their contributions.

(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, included:

(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: If members seek to rollover or transfer their eligible rollover contributions, the members will be required to rollover or transfer their eligible rollover contributions to eligible retirement plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust 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: There is no increase in fee or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 26 U.S.C. secs. 401(a)(31), 402(g), 408(d)(3)

2. State compliance standards: None

3. Vennium or uniform standards contained in the federal mandate: The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers’ Retirement System
(New Administrative Regulation)

102 KAR 1:300. Kentucky Teachers’ Retirement System

Trustees Education Program.

RELATES TO: KRS 161.250(3)(c)

STATUTORY AUTHORITY: KRS 161.250(3)(c) and KRS 161.310

NECESSITY. FUNCTION. AND CONFORMITY: KRS 161.310

requires the Board of Trustees of Kentucky Teachers’ Retirement Systems to promulgate all administrative regulations necessary or proper or the administration of the funds of the retirement system and for the transaction of business. KRS 161.250(3)(c) provides that the Board shall establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference in an administrative regulation. This administrative regulation establishes the “Kentucky Teachers’ Retirement System Trustees Education Program.”


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: November 17, 2008

FILED WITH LRC: November 18, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. at the Kentucky Teachers’ Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2009, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard
will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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 February 2, 2009. 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: Beau Barnes, General Counsel, Kentucky Teachers’ Retirement Systems, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 849-8500, fax (502) 849-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beau Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the "Kentucky Teachers' Retirement System Trustees Education Program."

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 161.250(3)(c) requires the Board of Trustees of Kentucky Teachers' Retirement System to establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference into an administrative regulation.

(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 a formal trustee education program for all trustees of the board, which shall be incorporated by reference into this administrative regulation as required by KRS 161.250(3)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will incorporate by reference the "Kentucky Teachers' Retirement System Trustees Education Program."

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The members of the Board of Trustees of Kentucky Teachers’ Retirement System.

(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 be required to comply with the "Kentucky Teachers' Retirement System Trustees Education Program."

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no cost to the members of the Board of Trustees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The members of the Board of Trustees will have mandatory education requirements concerning administration of the retirement plan.

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

(a) Initiation: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Teachers’ Retirement System are paid from the retirement trust fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The training requirements apply to all members of the Board of Trustees 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)? No

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

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

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

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

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

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

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

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)


RELATES TO: KRS 216A.1431, 219.011, 224 01-010, 224 01-410, 29 C.F.R. 1926.50 - 1926.66

STATUTORY AUTHORITY: KRS 224.01-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224 01-410 requires the cabinet to promulgate administrative regulations for methamphetamine contaminated properties. This administrative regulation is necessary to define terms that are used throughout 401 KAR Chapter 101.

Section 1. Definitions. (1) "Absorption" means:

(a) For a person or an animal, the process of a substance getting into the body through the eyes, skin, stomach, intestines, or lungs; or

(b) The process of taking in.

(2) "Acidic" means the condition of a medium that contains a sufficient amount of acid substances to lower the pH below seven and one-tenth (7.1).

(3) "Acute effect" means an immediate response to a contaminant that may consist of shortness of breath; cough; chest pain; dizziness; lack of coordination; chemical irritation; burns to the skin, eyes, mouth, or nose; and in severe cases, death.

(4) "Adverse health effect" means a change in body functions
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or cell structure that may indicate or lead to disease or health problems.
(5) "Ambient air" means an unconfined portion of the atmosphere including open air or surrounding air.
(6) "Cabinet" is defined by KRS 224.01-010(9).
(7) "Certified contractor" means an entity or individual who completes the steps required by 401 KAR 101-010 to become recognized by the state and is authorized to conduct the decontamination services for contaminated properties following the protocols of the tiered response system.
(8) "Clandestine methamphetamine lab" is defined by KRS 224.01-410(2)(a).
(9) "Confined space" means a space having the following characteristics:
(a) Limited means for exit and entry; and
(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, or depletion of oxygen.
(10) "Constituent of concern" or "COC" means chemicals or compounds that include methamphetamine or related hazardous materials that may be present at inhabitable properties.
(11) "Contaminated property" is defined by KRS 224.01-410(2)(b).
(12) "Cook" means:
(a) The process of manufacturing methamphetamine or other illegal substances; or
(b) The person responsible for manufacturing methamphetamine or other illegal substances.
(13) "Decontamination standards" is defined by KRS 224.01-410(2)(c).
(14) "Encapsulation" means the act of surrounding, protecting, or sheathing a building material, by applying paint or other sealant.
(15) "Flame ionization detector" or "FID" means one of several methods for measuring and quantifying primarily hydrocarbon gases. Flame ionization utilizes a hydrogen flame to ionize and detect gases that are essentially flammable; however, the process is far less sensitive to oxygen containing compounds due to the reduced carbon atoms.
(16) "Hazardous waste" is defined by KRS 224.01-010(3)(b).
(17) "Hazardous Waste Operator (HAZWOPER) training" means a forty (40) hour course required by OSHA under the General Site Worker standard per 803 KAR 2:403 and 29 C.F.R. 1926.50 through 1926.66 for workers to enter and work within an area defined as a hazardous waste site or uncontrolled hazardous waste site.
(18) "HEPA" means High-Efficiency Particulate Air Filtration system.
(19) "Home owner" means the title holder of the inhabitable property where a notice of methamphetamine contamination has been posted.
(20) "Hotel" is defined by KRS 219 011(c).
(21) "HVAC" means heating, ventilation, and air conditioning system.
(22) "Inhabitable property" is defined by KRS 224.01-410(2)(d).
(23) "Land owner" means the deed holder of the land.
(24) "Manufacturer" is defined by KRS 218A.1431(1).
(25) "Methamphetamine" is defined by KRS 218A.1431(2).
(26) "NAZI cook" means a method of producing methamphetamine using anhydrous ammonia.
(27) "OSHA" means Occupational, Safety, and Health Administration.
(28) "Property owner" means the home owner or land owner.
(29) "Personal protective equipment" or "PPE" means equipment for the eyes, face, "head, or extremities; protective clothing; respiratory devices; or protective shields or barriers, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazard of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.
(30) "Photoionization detector" or "PID" means a device used for the detection of certain VOC's, based on their ionization potential, which utilizes ultraviolet light to ionize gas molecules.

(31) "Precursor" means compounds or mixtures containing ephedrine or pseudoephedrine.
(32) "Red phosphorus" means ingredients that may be used in the manufacture of methamphetamine; the sinker plate on a book of matches is a frequently used source of red phosphorus.
(33) "Related hazardous material" is defined by KRS 224.10-410(2)(f).
(34) "Render unusable" means destruction of an item to a degree so that it cannot be used for its intended purpose.
(35) "Semi-volatile" means substances that slowly evaporate at normal temperatures or pressures.
(36) "Solvent" means a liquid capable of dissolving or dispersing another substance.
(37) "Surface material" is defined by KRS 224 01-410(2)(e).
(38) "Tiered response system" means a system to address the level of clean up services required for a contaminated property based upon the degree of methamphetamine production and the degree of potential contamination resulting from methamphetamine production as indicated by the results of assessment by responding states or local law enforcement.
(39) "Toxic agents" means a chemical or physical agent that, under certain circumstances of exposure, may cause adverse health effects.
(40) "Volatile" means evaporating readily at normal temperatures and pressures.
(41) "Volatile compounds" or "VC" means compounds that are in most cases organic in composition and evaporate readily into the

HANK LUST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 14, 2009
FILED WITH LRC: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the administrative regulation shall be held on February 24, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009, 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 March 2, 2009. Send a 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. Tim Hubbard, Assistant Director, Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tim.Hubbard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Tim Hubbard, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 101.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to help the reader understand the meaning of terms used in 401 KAR Chapter 101.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the authorizing statute by defining terms for 401 KAR Chapter 101.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will assist the reader by defining terms used in 401 KAR Chapter 101.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners of methamphetamine contaminated properties, contractors certified to clean up methamphetamine contaminated properties (there are currently 18). Kentucky State Police, local law enforcement agencies, the Cabinet for Health and Family Services Department of Public Health, and local health departments.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? It will not cost anything to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected individuals will have a better understanding of the terms used in 401 KAR Chapter 101 by using 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 cost to implement this administrative regulation.

(b) On a continuing basis: There will be no 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: There will be no cost for implementing this administrative regulation; therefore, funding will not be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The terms defined in this administrative regulation are applicable to all of 401 KAR Chapter 101.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police, local law enforcement agencies, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.01-410

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 is a definition regulation, and thus should not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This is a definition regulation, and thus should not generate expenditures.

(d) How much will it cost to administer this program for subsequent years? This is a definition regulation, and thus should not generate expenditures.

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 Waste Management
(New Administrative Regulation)

401 KAR 101:010. Contractor certification.

RELATES TO: KRS 224.01-410, 29 C.F.R. 1926.50-1926.65
STATUTORY AUTHORITY: KRS 224.01-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410 requires the cabinet to promulgate administrative regulations for the cleanup of methamphetamine contaminated properties. This administrative regulation establishes the criteria for contractor certification and issuance, suspension and revocation of certification.

Section 1. Applicability. (1)(a) Sections 2 and 3 of this administrative regulation shall apply to all contractors who become certified by the cabinet to clean up methamphetamine contaminated properties after July 15, 2008.

(b) Contractors certified by the cabinet to clean up methamphetamine contaminated properties, prior to July 15, 2008, who do not maintain certification shall be recertified as established in Sections 2 and 3 of this administrative regulation.

(2) Sections 4 through 6 of this administrative regulation shall apply to all contractors regardless of certification date.

Section 2. Certification Requirements. (1) Applicants for certified contractor shall:

(a) Complete and submit Certified Contractor Application, DEP 603, January 2009 to the cabinet for review;

(b) Obtain financial assurance pursuant to KRS 224.01-410(8)(a) and 401 KAR 101.020;

(c) Provide proof to the cabinet of liability insurance policy of at least $250,000.00, pursuant to KRS 224.10-410(6)(a); and

(d) Certify that decontamination shall be performed in accordance with 603 KAR 2:403 and 29 C.F.R. 1926.50-1926.65. Applicants shall provide the following for review:

1. Forty (40) hour HAZWOPER Certification for all personnel performing decontamination services on methamphetamine contaminated properties;

2. Eight (8) hour HAZWOPER refresher training certificates for all personnel performing decontamination services on methamphetamine contaminated properties.

(2) The cabinet shall review all contractor certification requirements and a complete application has been submitted; if a complete application is not submitted within six (6) months a new application shall be required.

(3)(a) Certified contractors shall submit to the cabinet copies of forty (40) hour HAZWOPER Certification or current eight (8) hour HAZWOPER refresher certificates for all personnel performing decontamination services on an annual basis.

(b) Failure to submit this information shall result in suspension of certification.

(4) Certified contractors shall report any changes in application Information to the Division of Waste Management, such as change
Section 3. Issuance of Certificate. (1) Upon completion, review, and approval of the application, the contractor shall receive the following:
(a) A certification letter from the cabinet signed by the director; and
(2) The cabinet shall maintain a list of certified contractors for methamphetamine contaminated properties on the division's web page.

Section 4. Suspension of Certification. (1) A certification shall be suspended, effective immediately, upon one (1) or more of the following:
(a) The financial assurance as required by 401 KAR 101:020 is no longer held in full by the contractor; or
(b) Personnel for the contractor have not submitted the certification pursuant to Section 2(1)(d) of this administrative regulation to the cabinet.
(2) A certification shall be reinstated if the contractor comes back into compliance with the requirements of 401 KAR 101:020 and this administrative regulation and provides written documentation of such compliance to the cabinet.

Section 5. Revocation of Certification. (1) A certification shall be revoked:
(a) If the contractor certification is suspended for more than 180 days; or
(b) If the contractor is fraudulent or deceitful in the submission of inaccurate data or qualifications.
(2) If the contractor's certification is revoked, the cabinet shall collect the forfeited financial assurance of any contractor found to be in violation and the cabinet shall use the forfeited financial assurance to decontaminate methamphetamine contaminated properties pursuant to KRS 224.01-410(6)(c).
(3) Contractors who have a certification revoked pursuant to this administrative regulation shall not be eligible to be recertified by the cabinet.

Section 6. Termination of Certification. (1) A certified contractor who wishes to terminate certification for decontamination services shall submit a request to the cabinet to terminate certification.
(2) The request will be reviewed by the cabinet.
(3) Upon verification that all work has been completed in compliance with KRS 224.01-410, and all decontamination services have ceased, the cabinet shall grant the termination of certification and release the contractor of financial assurance requirements.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Certified Contractor Application", DEP 6079A, January 2009;
(b) "Kentucky Cleanup Guidance for Methamphetamine Contaminated Properties", January 2009.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the division's Web site www.waste.ky.gov.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 14, 2009
FILED WITH LSS: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009, 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 March 2, 2009. 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: Tim Hubbard, Assistant Director, Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tim.Hubbard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes criteria for certification of contractors who clean up methamphetamine contaminated property.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish criteria for certification of contractors who clean up methamphetamine contaminated property.
(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 criteria for certification of contractors who clean up methamphetamine contaminated property.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by establishing criteria for certification of contractors who clean up methamphetamine contaminated property.
(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.
(e) List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: This administrative regulation affects individuals who want to become certified contractors for the cleanup of methamphetamine contaminated properties.
(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: Individuals who are wishing to become certified contractors will have to meet the requirements of Sections 2 and 3 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): Certified contractors will have to cover the cost of HAZWOPER 40-hour and 8 hour refresher training courses. The cost for the HAZWOPER 40-hour training course is $2500 and the 8-hour refresher is $1500. Contractors will also have to post financial assurance for $100,000 for Tiers 1 through 3 and $250,000 for Tier 4 cleanup. The cost associated with posting financial assurance will vary depending on the financial mechanism the contractor chooses.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The contractors will become certi-
fied to clean up methamphetamine contaminated properties which will generate revenue for the contractor.

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

(a) Initially: The initial cost to the administrative body to implement this administrative regulation is $16,000-$17,000.
(b) On a continuing basis: The cost to the administrative body to implement this regulation on a continuing basis would be $5,000-$5,500 per year for the contractor’s certification portion of methamphetamine cleanup program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Waste Management applies for a federal EPA Targeted Brownfield Assistance (TBA) grant, which is used to cover the administrative costs of 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 are no fees associated with this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is applied to financial assurance requirements for certified contractors all other requirements are the same. The financial assurance requirements are tiered because of the additional hazards associated with increased levels of contamination in the higher tiered response levels.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police, local law enforcement, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 224.01-410.
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 is the contractor certification regulation and should not generate revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is the contractor certification regulation and should not generate revenue.
(c) How much will it cost to administer this program for the first year? The initial cost to the administrative body to implement this administrative regulation was $16,000-$17,000.
(d) How much will it cost to administer this program for subsequent years? The cost to the administrative body to implement this regulation on a continuing basis would be $5,000.00-$5,500.00 per year for the contractor’s certification portion of methamphetamine cleanup program.

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

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management

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Section 6 of this administrative regulation; and
(2) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 224.01-410:
(a) A surety bond as specified in Section 7 of this administrative regulation;
(b) A letter of credit as specified in Section 8 of this administrative regulation;
(c) An escrow agreement as specified in Section 9 of this administrative regulation;
(d) A financial self-insurance test as specified in Section 10 of this administrative regulation; or
(e) A corporate guarantee as specified in Section 11 of this administrative regulation.


Section 7. Wording of Surety Bond. (1) A surety bond shall be executed on Surety Bond, DEP 6079D, January 2009.
(2)(a) To be eligible to issue a surety bond, a surety shall be listed as acceptable in the current edition of U.S. Treasury Circular 570.
(b) The penal sum of the bond shall not exceed the amount of the surety's underwriting limitation.


(2) If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

(2) The applicant may satisfy the requirements of this administrative regulation by passing a financial test as specified in this section. The applicant shall meet the criteria set forth in paragraph (a) or (b) of this subsection:
(a) Less than fifty (50) percent of the applicant's personal gross revenues are derived from contaminated methamphetamine cleanup operations; or
(b) A ratio of total liabilities to net worth less than two and zero tenths (2.0);
(c) A ratio of current assets to current liabilities greater than one and five-tenths (1.5); or
2. Net working capital and tangible net worth each at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation, or
(b) Tangible net worth of at least three (3) million dollars.
(3) To demonstrate that requirements of this test are met, the applicant shall submit the following items to the cabinet:
(a) A letter signed by the applicant and wording as specified on Financial Self-Insurance Test, DEP 6079F, January 2009;
(b) A copy of a report by an independent certified public accountant examining the applicant's financial statements for the company's most recently completed fiscal year; and
(c) A special report from the applicant's independent certified public accountant to the applicant stating that:
1. The auditor has compared the data that the letter from the applicant specified as having been derived from the independently audited year-end financial statements for the most recent fiscal year with the amounts in financial statements; and
2. In connection with the above subparagraph procedure, if matters did not come to the auditor's attention that caused the auditor to believe that the specified data should be adjusted.
(4)(a) After the initial submission of the items specified in subsection (3) of this section, the applicant shall send updated information to the cabinet no later than ninety (90) days after the close of each succeeding fiscal year.
(b) This information shall include all three (3) items specified in subsection (3) of this section.
(5)(a) If the applicant no longer meets the requirements of subsection (2) of this section, notice shall be sent to the cabinet of the intent to establish alternate financial assurance, as specified in this administrative regulation.
(b) The notice shall be sent by certified mail not later than ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements.
(c) The applicant shall provide that alternate financial assurance not later than one hundred twenty (120) days after the end of that fiscal year.
(6)(a) The cabinet may, based on a reasonable belief that the applicant no longer meets the requirements of this section, require reports of financial condition at any time from the applicant in addition to those specified in subsection (2) of this section.
(b) If the cabinet finds, on the basis of these reports or other information, that the applicant no longer meets the requirements of subsection (2) of this section, the applicant shall provide alternate financial assurance as specified in this administrative regulation not later than thirty (30) days after notification of this finding.
(c) The cabinet may disallow use of the financial self-insurance test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the applicant's financial statements.
(d) An adverse opinion or disclaimer of opinion by the independent certified public accountant shall be cause for disallowance.
(e) The applicant shall provide alternate financial assurance as specified in this administrative regulation not later than thirty (30) days after notification of the disallowance.
(8) The applicant is no longer required to submit the items specified in subsection (2) of this section when the applicant substitutes alternative financial assurance as specified in this administrative regulation.

(2) The applicant may satisfy the requirements of this administrative regulation by passing a financial test to offer a corporate guarantee sufficient to provide the financial assurance as specified in this section. The applicant shall meet the criteria established in paragraph (a) or (b) of this subsection:
(a) Less than fifty (50) percent of the applicant's corporate gross revenues shall be derived from contaminated methamphetamine cleanup operations; or
(b) The applicant shall have:
1. Satisfaction of at least two (2) of the following ratios:
   a. A ratio of total liabilities to net worth less than two and zero tenths (2.0);
   b. A ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or
   c. A ratio of current assets to current liabilities greater than one and five-tenths (1.5); or
2. Net working capital and tangible net worth each at least six (6) times the amount of financial assurance required in Section 3 of this administrative regulation, or
   b) Tangible net worth of at least three (3) million dollars.
(3) To demonstrate that requirements of this test are met, the applicant shall submit the following items to the cabinet:
(a) A letter signed by the applicant and wording as specified on Financial Self-Insurance Test, DEP 6079F, January 2009;
(b) A copy of a report by an independent certified public accountant examining the applicant's financial statements for the company's most recently completed fiscal year; and
(c) A special report from the applicant's independent certified public accountant to the applicant stating that:
1. The auditor has compared the data that the letter from the applicant specified as having been derived from the independently audited year-end financial statements for the most recent fiscal year with the amounts in financial statements; and
2. In connection with the above subparagraph procedure, if matters did not come to the auditor's attention that caused the
c. Tangible net worth of at least ten (10) million dollars; and

d. Assets located in the United States amounting to at least
ninety (90) percent of total assets or at least six (6) times the
amount of financial assurance required in Section 3 of this admin-
istrative regulation.

To demonstrate that requirements of this test are met, the
applicant shall submit the following items to the cabinet:
(a) A letter signed by the applicant's chief financial officer and
worded as specified on DEP Form 6079G;
(b) A copy of a report by an independent certified public ac-
countant examining the applicant's financial statements for
the most recently completed fiscal year; and
(c) A special report from the applicant's independent certified
public accountant to the applicant stating that:
1. The auditor has compared the data that the letter from
the chief financial officer specified as having been derived from
the independently audited year-end financial statements for the most
recent fiscal year with the amounts in such financial statements; and

3. In connection with the above subparagraph, procedure, if no
matters came to the auditor's attention that caused the auditor
to believe that the specified data should be adjusted.

4.(a) After the initial submission of the items specified in sub-
section (3) of this section, the applicant shall send updated infor-
mation to the cabinet not later than ninety (90) days after the close
of each succeeding fiscal year.

(b) The information shall include all three (3) items specified in
subsection (3) of this section.

5.(a) If the applicant no longer meets the requirements of
subsection (2) of this section, notice shall be sent to the cabinet of
the intent to establish alternate financial assurance, as specified in
this administrative regulation.

(b) The notice shall be sent by certified mail not later than nin-
ty (90) days after the end of the fiscal year for which the year-end
financial data show that the applicant no longer meets the require-
ments.

(c) The applicant shall provide that alternate financial assur-
ance not later than 120 days after the end of that fiscal year.

5.(a) The cabinet may, based on a reasonable belief that the
applicant no longer meets the requirements of subsection (2) of
this section, require reports of financial condition at any time from
the owner or operator in addition to those specified in subsection
(3) of this section.

(b) If the cabinet finds, on the basis of these reports or other
information, that the applicant no longer meets the requirements
of subsection (2) of this section, the applicant shall provide alternate
financial assurance as established in this administrative regulation
not later than thirty (30) days after notification of this a finding.

(c) The cabinet may disallow use of the test on the basis of qualificatons in the opinion expressed by the independent certified
public accountant in his report on examination of the applicant's
financial statements.

(d) An adverse opinion or disclaimer of opinion shall be cause
for disallowance.

(e) The applicant shall provide alternate financial assurance as
specified in this administrative regulation not later than thirty (30)
days after notification of the disallowance.

8. The applicant is no longer required to submit the items
specified in subsection (3) of this section if the applicant substitutes
alternative financial assurance as established in this administrative
regulation; or

9.(a) The applicant may meet the requirements of this section
by obtaining a written guarantee, hereafter referred to as a "parent
corporate guarantee".

(b) The guarantor shall be the parent corporation of the certi-
fied contractor as defined in Section 10 of this administrative regu-
lation.

(c) The guarantor shall meet the requirements for applicants in
subsections (2) to (7) of this section and shall comply with the
terms of DEP Form 6079G.

(d) The parent corporate guarantee shall accompany the
items sent to the cabinet as specified in subsection (3) of this sec-
tion.

2. The terms of the parent corporate guarantee shall provide

that:

a. If the applicant fails to perform decontamination of a conta-
mated inhabited property to the decontamination standards
established in 401 KAR 101:040, the guarantor shall do so or shall
establish a trust fund, in the name of the applicant, as specified in
Section 10 of this administrative regulation;

b. If the parent corporate guarantee shall remain in force unless
the guarantor sends notice of cancellation by certified mail to the
applicant and to the cabinet; and

c. Cancellation shall not occur, during the 120-day period be-
ginning on the first day that both the applicant and the cabinet have
received notice of cancellation, as evidenced by the certified mail
return receipts.

3. If the applicant fails to provide alternate financial assurance
as specified in this administrative regulation, and fails to obtain
the written approval of this alternate financial assurance from the cabi-
net not later than ninety (90) days after both the contractor and the
applicants have received notice of cancellation of the parent corporate
guarantee from the guarantor, the guarantor shall provide the alter-
ate financial assurance in the name of the certified contractor.

Section 12. Use of Multiple Financial Mechanisms. (1)(a) The
applicant may satisfy the requirements of this administrative regu-
lation by establishing more than one (1) financial mechanism.

(b) These mechanisms shall be limited to the following:
1. Surety bonds;
2. Letters of credit;
3. Escrow agreements;
4. Financial self-insurance test; or
5. Corporate guarantee.

(2) The mechanisms shall be as specified in Sections 6 to 11
of this administrative regulation respectively, except that it is the
combination of mechanisms, rather than each individual mechanism,
that shall provide financial assurance for an amount at least equal
to the financial assurance amounts specified in Section 2 of this
administrative regulation.

Section 13. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) "Performance Agreement", DEP 6079D, January 2009;
(b) "Surety Bond", DEP 6079B, January 2009;
(c) "Irrevocable Letter of Credit", DEP 6079C, January 2009;
(d) "Escrow Agreement", DEP 6079E, January 2009;
(e) "Financial Self-Insurance Test", DEP 6079F, January 2009;
and

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at Division of Waste Management,
200 Fair Oaks, 2F, Frankfort, Kentucky 40601, Monday
through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the division's Web
site at www.waste.ky.gov.

HANK LISTER, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 14, 2009
FILED WITH LRC: January 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
February 24, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks
Lane, Frankfort, Ky 40601. Individuals interested in being heard at
this hearing shall notify this agency in writing by February 17,
2009, five working days prior to the hearing, of their intent to attend. If
no notification of intent to attend the hearing is received by that
date, the hearing may be cancelled. This hearing is open to the
public. Any person who wishes to be heard will be given an oppor-
tunity 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 pro-
posed administrative regulation. Written comments shall be ac-
ccepted until March 2, 2009. 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: Tim Hubbard, Assistant Director, Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tim.Hubbard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does:
This administrative regulation establishes the financial assurance requirements for certified contractors.
(b) The necessity of this administrative regulation:
This administrative regulation is necessary to establish the financial assurance requirements for certified contractors.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms to the content of the authorizing statute by establishing financial assurance requirements for certified contractors who clean up methamphetamine contaminated properties.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will assist in the effective administration of the statute by establishing criteria for certified contractors who clean up methamphetamine contaminated properties.

(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 statute: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of this administrative regulation: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
This administrative regulation affects individuals who want to become certified contractors for the cleanup of methamphetamine contaminated properties.

(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: Individuals who are wishing to become certified contractors will have to meet the requirements of Sections 2 through 4 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): Contractors will also have to post financial assurance for $100,000 for Tiers 1 through 3 and $250,000 for Tier 4 cleanups. The cost associated with posting financial assurance will vary depending on the financial mechanism the contractor chooses.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will generate revenue for the contractors who become certified to clean up methamphetamine contaminated properties.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: To implement this administrative regulation initially it will cost $12,000 - $13,000.
(b) On a continuing basis: To implement this administrative regulation on a continuing basis it will cost $1,000 - $1,500.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Waste Management applies for a federal EPA Targeted Brownfield Assistance (TBA) grant, which is used to cover the administrative costs of 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 are no fees associated with this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with this administrative regulation.
(9) TIERING: Is tiering applied? Tiering is applied to financial assurance requirements for certified contractors all other requirements are the same. The financial assurance requirements are tiered because of the additional hazards associated with increased levels of contamination in the higher tiered response levels.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police, local law enforcement agencies, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 224.01-410
4. Estmate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the current full year and the first four years that this administrative regulation will 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 current full 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 the first four years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 101:030. Tiered response system.

RELATES TO: KRS 224.01-410
STATUTORY AUTHORITY: KRS 224.01-410
NECESSITY, FUNCTION AND CONFORMITY: KRS 224.01-410 requires the cabinet to establish administrative regulations for the cleanup of methamphetamine contaminated properties. This administrative regulation establishes the assessment of contaminated properties and the tiered response system.

Section 1. Applicability. This administrative regulation shall apply to methamphetamine contaminated properties discovered by Kentucky State Police or local law enforcement on or after July 15, 2008.

Section 2. Assessment of an Inhabitable Property. (1) The cabinet shall provide the Kentucky State Police and local law enforcement with the initial site assessment form Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria, DEP 1016, - 1954 -
January 2009.

(a) Based on the results of the Tier Selection Criteria portion of the form, if the property is determined to be a contaminated property, law enforcement shall assign a tier for cleanup response, pursuant to KRS 224.01-410(5).

(b) Once the form has been completed it shall be sent to the cabinet, where it shall be available for review as an open record.

(c) Law enforcement shall consult with the cabinet prior to making a Tier 4 recommendation.

(d) A certified contractor may determine that an alternate tier for cleanup response is more appropriate, based on assessments and testing of the property.

(e) During the cleanup process, the contractor discovers any evidence that would alter the tier assignment for the contaminated property, the contractor shall do the following:

1. Halt all cleanup activities;
2. Contact the cabinet within three (3) business days to request any variance from the initial tier assignment;
3. Provide a written justification for the variance request, and include results of assessments completed, sample results, photographs, and all other evidence and documentation supporting the variance request.
4. Once all supporting documentation has been provided to the cabinet, there shall be a review and decision made by the cabinet to determine if the variance request has been granted.
5. Once the review is complete and decision made all cleanup activities shall resume in accordance with the decision regarding the tier.

Section 3. Classification as a Tier 1. (1) A Tier 1 shall include the following:

(a) Crime scene investigation shows that the methamphetamine manufacturing or cooking process was initiated;
(b) Limited amounts of reagents or precursors for methamphetamine manufacturing are present and open;
(c) It is uncertain whether a 'cook' was completed; or
(d) The investigation by the police finds:
   1. One (1) or two (2) anhydrous ammonia "Nazi" 'cooks' were completed; and
   2. Less than two (2) ounces of methamphetamine was produced per production event;

(e) The investigation shows methamphetamine production took place; and
(f) Minor spills and staining observed on surfaces near the suspected cooking location.

Section 4. Classification as a Tier 2. (1) A Tier 2 shall include the following:

(a) Crime scene investigation finds that methamphetamine, reagents, or precursors were produced; or
(b) Police investigation finds:
   1. One (1) or two (2) red phosphorus (Red-P); or
   2. Three (3) to four (4) "Nazi" method 'cooks' may have been completed; and
   b. Less than two (2) ounces of methamphetamine was produced per production event;
   c. The police investigation shows methamphetamine production lasted longer than three (3) days, but less than two (2) weeks;
   d. Spills and staining observed in multiple areas of the structure.

Section 5. Classification as a Tier 3. (1) A Tier 3 shall include the following:

(a) Investigation of the crime scene shows that numerous Red-P or "Nazi" 'cooks', or precursors and reagent production have occurred;
(b) The investigation suggests each cook that was completed could yield more than two (2) ounces but less than one (1) pound of methamphetamine per production event;
(c) The investigation suggests methamphetamine production was conducted over a period of two (2) weeks to several months;
(d) Moderate to severe spills and staining observed in the cooking areas and throughout the structure;

(e) Investigation shows releases outside the structure observed including:
   1. Burn pits,
   2. Open dumps; and
   3. Outside cooking areas.

(f) A property where the method for methamphetamine production was determined to be the F2P2/Methylamine method;
(g) A property with re-occurring 'cooks'; or
(h) A property where there is insufficient evidence to complete the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria (TAS), DEP 1016, January 2009.

Section 6. Classification as a Tier 4. (1) A Tier 4 shall include the following:

(a) Investigation of the property by the police suggests that the lab is capable of producing large quantities, greater than one (1) pound of methamphetamine, reagents, or precursors during a production event;
(b) Investigation shows severe environmental effects outside the structure due to potentially large quantities of hazardous materials dumped or released, or drummed and buried wastes discovered on the property;
(c) Investigation suggests methamphetamine production was conducted longer than two (2) weeks to several months; or
(d) Spills and staining inside and outside the structure.

Section 7. Incorporation by Reference. (1) "Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria", DEP 1016, January 2009, is incorporated by reference

This material may be updated, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, or on the Division's Web site, www.waste.ky.gov.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 14, 2009
FILED WITH LRC: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009. This hearing will be limited 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 March 2, 2009. 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: Tim Hubbard, Assistant Director, Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tim.Hubbard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes the assessment of contaminated properties and the tiered response system.

(b) The necessity of this administrative regulation:
The administrative regulation is necessary to establish the as-
VOLUME 35, NUMBER 8 – FEBRUARY 1, 2009

assessent of contaminated properties and the tiered response system.

(c) How this administrative regulation conforms to the content of the
authorizing statutes:
This administrative regulation conforms to the authorizing statutes
by establishing the assessment of contaminated properties and the
tiered response system.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes:
This administrative regulation will assist in the assessment of con-
taminated properties and the tiered response system
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of
(a) How the amendment will change this existing administrative regu-
lation:
This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regu-
lation:
This is a new administrative regulation.
(c) How the amendment conforms to the content of the autho-
rizing statutes:
This is a new administrative regulation.
(d) How the amendment will assist in the effective administra-
tion of the statutes:
This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation:
This administrative regulation will help in determining the ap-
propriate tiered response by Kentucky State Police or local en-
forcement, who will be completing the Clandestine Drug Lab Pre-
liminary Assessment Tier Selection Criteria form to ensure the
appropriate cleanup response.

(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, in-
cluding:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative reg-
ulation or amendment:
The Kentucky State Police and local law enforcement will have to
be familiar with the assessment and classification of each of the
different tiered response criteria
(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 the Kentucky State Police or local law en-
forcement to implement this regulation. The form is provided by the
Department of Waste Management and all information provided on the
form is already collected by KSP or local enforcement to provide to
USDEA.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3):
No benefit will accrue to the entities identified.
(5) Provide an estimate of how much will it cost the administra-
tive body to implement this administrative regulation:
(a) Initially: To implement this administrative regulation it will
cost the division between $12,000-$12,500.
(b) On a continuing basis: To implement this administrative regu-
lation on a continual basis it will cost the division between
$8,000-$8,500. This does not include any clean up activities or
cost to the state.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation? There
are no fees associated with this administrative regulation.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment:
There are no fees associated with this administrative regulation.

(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees:
There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is applied to this regu-
lation. The least harmful tier of methamphetamine contamination to
human health is a tier 1 and the most harmful is a tier 4 as the
potential levels of contamination are expected to increase with the
higher tiers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
   service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
   (including cities, counties, fire departments, or school districts) will
   be impacted by this administrative regulation?
   Kentucky State Police, local law enforcement agencies, Cabi-
net for Health and Family Services Department for Public Health,
and local health departments will be impacted.
3. Identify each state or federal statute or federal regulation that
   requires or authorizes the action taken by the administrative regu-
   lation. KRS 224.01-410
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 is
       the tier response system regulation and should not generate reve-
       nue.
   (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 is
       the tier response system regulation and should not generate reve-
       nue.
   (c) How much will it cost to administer this program for the first
       year? To implement this administrative regulation it will cost the
       division between $12,000-$12,500.
   (d) How much will it cost to administer this program for subse-
       quent years? To implement this administrative regulation on a
       continual basis it will cost the division between $8,000-$8,500.

   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 Waste Management
(New Administrative Regulation)

401 KAR 101:040. Cleanup and sampling requirements.

RELATES TO: KRS 224.01-400, 224.01-410
STATUTORY AUTHORITY: KRS 224.01-410
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-
410(3) authorizes the cabinet to promulgate administrative regula-
tions providing for decontamination standards for methamphet-
amine contaminated properties. This administrative regulation es-
establishes the cleanup requirements for methamphetamine conta-
nminated properties

Section 1. Applicability. (1) This administrative regulation ap-
pplies to an owner of a property where a notice of methamphet-
amine contamination has been placed.
(2) An owner of a contaminated property shall not have the
notice removed until the owner has complied with:
(a) Section 2 of this administrative regulation for demolish;
(b) Sections 3, 4, 8, 9 and 10 for a Tier 1 contaminated proper-

(c) Section 3, 5, 8, 9, and 10 for a Tier 2 contaminated proper-

(d) Section 3, 6, 8, 9, and 10 for a Tier 3 contaminated proper-
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Section 2. Demolition requirements. (1) An owner of contaminated property may choose to demolish the property instead of meeting the decontamination standards of this administrative regulation.

(2) An owner shall notify the cabinet, in writing, of the intent to demolish a contaminated property ten (10) days before the demolition activities begin.

(3)(a) An owner shall not be required to hire a certified contractor for the purposes of demolition of a contaminated property.

(b) Within sixty (60) days of demolition, the owner shall submit to the cabinet, the Owner’s Certificate of Demolition (OCD), DEP 6085, January 2009, with the following:
   1. Predemolition photographs;
   2. Postdemolition photographs; and
   3. Waste disposal receipt.

(c) An owner shall render all furnishings unusable prior to disposal.

(d) All solid waste generated during demolition activities shall be disposed of at a permitted solid waste contained landfill.

(4) An owner shall comply with all applicable federal, state, and local regulations regarding demolition of a property.

(5) The cabinet shall review an Owner’s Certificate of Demolition (OCD) upon receipt.

(a) If the cabinet determines the OCD form is complete, a release letter for the contaminated property shall be issued to the owner, local health department, the Department for Public Health, and the Kentucky State Police; and

(b) If the cabinet determines the OCD form is not complete, the cabinet shall notify the owner, in writing, of the deficiencies.

Section 3. General Cleanup Requirements. (1) The requirements of this section shall be performed by a certified contractor.

(2) The following cleanup requirements shall be necessary for each tier of contaminated properties:

(a) 1. The certified contractor shall conduct a Preliminary Assessment of the property and all structures on the property.

   2. Information to be collected and activities to be conducted shall include:

      - A copy of the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria, DEP 1016, January 2009, for the property.

      - Conduct air monitoring inside the structure for the presence of volatile compounds with a photolimination detector (PID) or flame ionization detector (FID). Additional field instrumentation may be utilized to determine proper level of personal protective equipment (PPE); and

      - Conduct inspection of the dwelling, other structures on the property and surrounding land, with special attention given to:

         - Methamphetamine manufacturing areas;
         - Hazardous chemical use, storage, or disposal areas;
         - Fire damage;
         - Etched fixtures in bathrooms and kitchen;
         - Heating, ventilation, and air conditioning systems (HVAC);
         - Plumbing and septic system;
         - Spills; and
         - Stained areas;

      - If suspicious items (for example containers with residues, tubing, odd containers of lather or paraphernalia) are discovered that are apparently related to methamphetamine manufacturing, a contractor shall contact Kentucky State Police or local law enforcement immediately. If law enforcement personnel do not remove these items, they shall be containerized, properly disposed, and the disposal shall be documented.

      - Law enforcement officials shall be contacted if firearms or bulk hazardous substances are encountered during cleanup.

      - Carefully segregate and properly dispose of any hypodermic needles found on the property. A container made of puncture resistant plastic shall be used.

      - Prior to the cleanup response, remove all ancillary volatile and semi-volatile chemical sources that may be located on the property not associated with the lab process so that it will not affect results of air monitoring.

      - After completion of cleanup, confirmatory samples shall be collected in accordance with procedures in Sections 9 and 10 to determine if the property meets the decontamination standard as established in Section 11 of this administrative regulation.

(4) The following documentation shall be compiled and submitted with the Contractor’s Certificate of Decontamination (CCD), DEP 5035, January 2009, to the cabinet within sixty (60) days of completion of cleanup activities:

(a) A site map drawn to scale depicting:

   - The property and its layout, including identification of other structures on the property, and location of all potential areas of contamination observed during preliminary assessment;

   - The property’s location relative to streets and surrounding properties; and

   - Streams and drainage features located near or adjacent to the property.

(b) Sketches of each room and each floor of the property depicting:

   - The areas of observed contamination;

   - Location of appliances;

   - Kitchen and bathroom fixtures;

   - Locations of post-decontamination samples and areas where air monitoring was conducted; and

   - Photographs shall be taken of conditions before and after decontamination and of all post-decontamination sample locations in order to provide documentation of the cleanup.

Section 4. Tier 1 Response. (1) The cleanup requirements of this section shall be performed by a certified contractor.

(2) In addition to the general cleanup requirements in Section 3 of this administrative regulation, a cleanup for a Tier 1 Response shall include, at a minimum, the following:

(a) Ventilate the property for a minimum of forty-eight (48) hours prior to cleanup; and

(b) Replace air filters in HVAC system. The HVAC shall not be turned on until the property has been decontaminated;

(c) Target areas of a minor spill for cleanup;

(d) Wash all hard surfaces with hot water and cleansers. This includes:

   - Appliances;
   - Floors;
   - Walls;
   - Ceilings;
   - Countertops;
   - Cabinets; and
   - Bathroom fixtures;

   - Shampoo rugs;

   - Steam clean mattresses and cloth furniture;

   - Have bed linens and drapes laundered;

   - Remove all clothing, children’s toys, or other absorbent items left behind by the methamphetamine lab operator or their family; render them unusable; and properly dispose of them. This step shall be photo documented, and

   - Thoroughly clean surfaces that collect dust.

(3) All contaminated properties shall require at least a Tier 1 cleanup response.

Section 5. Tier 2 Response. (1) The cleanup requirements of this section shall be performed by a certified contractor.

(2) In addition to the general cleanup requirements in Section 3 of this administrative regulation, a cleanup for a Tier 2 Response shall include, at a minimum, the following:

(a) Ventilate property for a minimum of seventy-two (72) hours;

(b) Remove all potential sources of volatile compounds (VC) on the property;

(c) Target areas of a spill for cleanup;

(d) Wash all hard surfaces with hot water and cleansers. This includes:

   - Appliances;
   - Floors;
   - Walls;
   - Ceilings;
5. Countertops;
6. Cabinets; and
   (e) Remove all clothing, children's toys, or other absorbent items left behind by the methamphetamine lab operator or their family; render them unusable; and properly dispose of them. This step shall be photo documented;
   (f) Thoroughly clean surfaces that collect dust;
   (g) Etched, stained, or contaminated appliances and fixtures, to the point that successful cleaning is in doubt, shall be rendered unusable and removed;
   (h) All stained surfaces and contaminated items shall be rendered unusable, removed, and disposed of at a permitted solid waste contained landfill;
   (i) Submit all disposal receipts with the CCD;
   (j) All nonstained hard surfaces shall be double-washed with hot water and cleaners;
   (k) All washed hard surfaces shall be painted or sealed; and
   (l) Replace air filters in HVAC, and clean ventilation duct works. The HVAC shall not be turned on until the property has been decontaminated.

Section 6. Tier 3 Response. (1) The cleanup requirements of this section shall be performed by a certified contractor.
(2) In addition to the General Cleanup Requirements in Section 3 of this administrative regulation, a cleanup for a Tier 3 Response shall include, at a minimum, the following:
(a) Ventilate property for a minimum of five (5) days;
(b) Remove all clothing, children’s toys, or other absorbent items left behind by the methamphetamine lab operator or their family; render them unusable; and properly dispose of them. This step shall be photo documented;
(c) Thoroughly clean surfaces that collect dust;
(d) Etched, stained, or contaminated appliances and fixtures shall be rendered unusable and removed;
(e) Absorbent surfaces and materials shall be rendered unusable and removed;
(f) All stained surfaces and contaminated items shall be rendered unusable, removed, and disposed of at a permitted solid waste contained landfill;
(g) Submit all disposal receipts with the CCD;
(h) All nonstained hard surfaces shall be double-washed with hot water and cleaners;
(i) All washed hard surfaces shall be painted or sealed;
(j) Replace air filters in HVAC, and clean ventilation duct works;
(k) If there is an on-site septic system, access the septic tank, and screen the septic tank for VCs by using a PID and test the pH of the liquid in the tank.
   1. If VC and pH readings are indicative of impacts from methamphetamine lab waste, collect a slide sample and follow the procedures and standards per 401 KAR 31:030 to determine if the waste is hazardous.
   2. If it is determined that the waste is hazardous, pump septic system and dispose of sludge at a hazardous waste facility based on the waste characterization sample analyses. The contractor shall keep all disposal receipts or manifests;
(l) Clean or remove contaminated subfloor or other framing materials prior to reconstruction. Do not remove any structural members of the building that would compromise structural integrity;
(m) All surfaces, not replaced, shall meet the decontamination standard after cleanup and painting or sealing; and
(n) Removed items shall be disposed of at a permitted solid waste contained landfill and documented with copies of disposal receipts.

Section 7. Tier 4 Response (1) Law enforcement agencies shall consult with EEC prior to making this Cleanup Tier Recommendation.
(2) A large amount of contamination inside the structure may render its cleanup uneconomical, and demolition may be the most cost-effective option. The owner shall submit documentation of the property being demolished including the OCD and disposal receipts to the cabinet, as established in Section 1 of this administr-
Appliances (Cleaned) One 10cm x 10cm sample from exposed surface of each cleaned appliance. If multiple appliances are present, up to 4 wipes may be combined into one composite sample representing 400 sq. cm.

* If the flooring is carpeting that has only been cleaned and not removed, the floor sample can be taken from the lowest point on one wall nearest the cooking area, or just above the baseboard in non-cooking rooms.

(a) To confirm cleanup of the property, all samples collected and analyzed shall be below the decontamination standard of 0.1 µg/100 cm² as established in Section 11 of this administrative regulation.

(b) In addition to the samples noted in Table 1, the certified contractor shall also collect quality assurance and quality control wipe samples and field blanks in accordance with standard sampling and analytical practices.

(c) The contractor shall do the following:
1. Log all samples collected at the site and QA/QC samples on a chain of custody form.
2. Maintain proper temperature; and
3. Maintain records of sample shipment to the laboratory.

Section 10. Analytical Laboratory Requirements. (1) Certified contractors shall use an EPA or other nationally-accredited analytical laboratory to ensure that all analytical data are reliable and reproducible.

(b) (a) For methamphetamine analyses, the laboratory shall utilize Method 8270C-Modified, "Semi-volatile Organic Compounds by Liquid Chromatography or Gas Chromatography/Mass Spectrometry", from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. EPA SW-846, Third Edition (Nov. 1996), Revision 3 (Dec. 1996), or other accredited laboratory methods to achieve a detection limit of at least 0.1 µg/100 cm², and include all quality assurance and quality control documentation required by the method.

(b) For all other waste or chemical analyses requiring an off-site environmental laboratory, EPA SW-846 methods shall be utilized.

(c) It shall be the responsibility of the certified contractor to ensure that the laboratory used is an accredited laboratory capable of performing the required analyses.

Section 11. Cleanup Standards

<table>
<thead>
<tr>
<th>Methamphetamine</th>
<th>Decontamination Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.1 µg/100 cm² (all surface materials)</td>
</tr>
</tbody>
</table>

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

(a) "Owner's Certificate of Demolition", DEP 5085, January 2009;
(b) "Contractor's Certificate of Decontamination (CCD)", DEP 5035, January 2009; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the division's Web page www.waste.ky.gov.

HANK LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: January 14, 2009
FILED WITH LRC: January 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009, 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 March 2, 2009. 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: Tim Hubbard, Assistant Director, Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tim.Hubbard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the cleanup and sampling requirements for the cleanup of methamphetamine contaminated properties.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cleanup and sampling requirements for the cleanup of methamphetamine contaminated properties.
(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 criteria for the cleanup and sampling of methamphetamine contaminated property for the certified contractors.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by establishing criteria for the cleanup and sampling of methamphetamine contaminated property for the certified contractors.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This 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 statute: This is a new administrative regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certified contractors who cleanup methamphetamine contaminated properties.
(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: Contractors who are certified to clean up methamphetamine properties will have to meet the requirements in Sections 2 through 11 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): In complying with this administrative regulation the cost to clean up a methamphetamine lab can cost anywhere from $5000 to $150,000 depending on the lab size and conditions.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to the certified contractors is that if the methamphetamine labs are cleaned up to the specifications in this regulation, the contractor will be able to collect a fee for their work.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: To implement this regulation it will cost the administrative body between $15,000-$15,100.
(b) On a continuing basis: To implement this regulation on a continuing basis if the costs are divided between $59,000-$59,500
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no fees associated with this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees associated with this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with this administrative regulation.
(9) TIERING: Is tiering applied? Tiering is applied to this regulation. The least harmful tier of methamphetamine contamination is a tier 1 and the most harmful is a tier 4. Therefore, the cleanup will depend on the tier selection. The cleanup and sampling requirements regulation is tiered because of the additional hazards associated with tier 4 site cleanups.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted.
3. What state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224:01-410
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.
5. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This is a cleanup and sampling requirement regulation, thus and should not generate revenue.
6. How much will it cost to administer this program for the first year? To implement this regulation it will cost the administrative body between $15,000-$15,100.
7. How much will it cost to administer this program for subsequent years? To implement this regulation on a continual basis it will cost the division between $59,000-$59,500.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards, Apprenticeship and Mediation
(New Administrative Regulation)
803 KAR 1:120. Prevailing Wage Posting Requirements.

RELATES TO: KRS 337,530
STATUTORY AUTHORITY: KRS 337,530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337,530(3) requires public works contractors and subcontractors to post in a conspicuous place at the site of the construction work a copy of the prevailing wages of wages and working hours prescribed in the contract with the public authority. This administrative regulation clarifies the statute’s requirements and specifies that translated rates be posted if non-English speaking employees are on the construction site. This regulation imposes different requirements for federal law. Federal law does not require posting of wage rates and hours at the primary site entrance, and does not require posting of translated rates where non-English speaking persons are present. Employers can differ as to what is considered a conspicuous place or places within the meaning of the statute. By requiring that the rates be posted at least at the primary site entrance, this regulation will assist employers in complying with the posting requirement. In addition, non-English speaking construction employees are increasing in numbers; the requirement that translated rates be posted provides a clear benefit to non-English speaking employees.

Section 1. Posting of the Wage Rates for Public Projects shall comply with KRS 337,530(3). The posting shall be in a conspicuous place and at a minimum shall appear in the open at the primary project site entrance. The method of posting shall be of sufficient size for each page of the rates to be visible without overlapping.

Section 2. Posting shall be legible and readily accessible to anyone on the job site. If non-English speaking employees are present on the job site, translated rates shall be furnished by the Labor Cabinet and posted alongside the rates.

Section 3. Any contractor or subcontractor performing work on the project who does not post the rates shall be deemed in violation of KRS 337,530(3). Civil money penalties shall be issued for all violations subsequent to the first violation.

J.R. GRAY, Secretary
APPROVED BY AGENCY: January 8, 2009
FILED WITH LRC: January 12, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on February 26, 2009, at 10 a.m. (EDT) at the Kentucky Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. 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: Dan Walton, Acting Executive Director, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dan Walton
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation clarifies the requirements for the conspicuous posting of prevailing wage rates on public works projects. It establishes that the rates be posted at the primary project site entrance, and that translated rates be posted if non-English speaking employees are present on the construction site.
(b) The necessity of this administrative regulation: This regulation does not set forth any new requirements. KRS 337,530(3) specifies that contractors and subcontractors post prevailing rates
of wages and working hours in a conspicuous place or places. This regulation is needed in order to clarify that the rates be posted at the primary entrance. It is also needed to clarify that translated rates be posted if non-English speaking employees are present on the construction site.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.530(9) specifies that contractors and subcontractors post prevailing rates of wages and working hours in a conspicuous place or places. This regulation simply amplifies the content by making it plain that rates be posted at the primary site entrance and that translated rates be posted if needed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Employers can differ without the necessary consent or to be posted a conspicuous place or places within the meaning of the statute. By requiring that the rates be posted at least at the primary site entrance, this regulation will assist employers in complying with the posting requirement. In addition, non-English speaking construction employees are increasing in numbers, and the regulation assures that translated rates will be posted in the event non-English speaking employees are present on the site.

(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 this 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. The proposed regulation 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: All employers, employees, and places of employment throughout the Commonwealth covered by KRS 337 are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Contractors and subcontractors on public works projects will have to post prevailing rates of wages and working hours at the primary site entrance, and will have to post translated rates if non-English speaking employees are present on the construction site.

(b) In order to comply with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to regulated entities within the Commonwealth are considered negligible. The statute already requires that rates be posted, and the additional cost of posting translated rates should be negligible, since the Department of Workplace Standards will provide translated rates on request.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because the regulation clarifies that rates be posted at the primary site entrance, employees will know precisely where to obtain the information, and know that the information will always be posted at the primary site entrance on public works projects, wherever the job. The regulation that translated rates be posted provides a clear benefit to employees on sites where non-English speaking employees are present.

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

(a) Initially: There will be no initial cost to implement this regulation. There are no new provisions or requirements.

(b) On a continuing basis: There will be no continuing cost to implement this regulation.

(6) What is the nature of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees, nor directly or indirectly increases any fees.

TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 337 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Apparent no federal statute or regulation mandates the requirements set forth in the proposed addition to 803 KAR Chapter 1. A Westlaw search of the Code of Federal Regulations, seeking documents in which "prevailing wage" and "translate" or "Spanish" occur in the same sentence, revealed no documents.

2. State compliance standards: Not applicable.

3. Minimum or uniform standards contained in the federal mandate: Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: Yes. Since federal law does not require posting of wage rates and hours at the primary site entrance, this regulation imposes different requirements than federal law. Since federal law does not require the posting of translated rates, this regulation imposes a stricter requirement on public works sites where non-English speaking employees are present.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The proposed regulation will facilitate the statute's requirement that wage and hour rates be posted in a conspicuous place or places. Employees can differ as to what is considered a conspicuous place or places within the meaning of the statute. By requiring that the rates be posted at least at the primary site entrance, this regulation will assist employers in complying with the posting requirement.

6. Additional state laws or regulations that will also be required to comply with the proposed regulation: Non-English speaking construction employees are increasing in numbers, and the regulation assures that translated rates will be posted in the event non-English speaking employees are present on the site. Since the Labor Cabinet will furnish translated rates on request, the cost of the regulation is minimal, while the benefit to non-English speaking employees will be substantial.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts): No.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: This administrative regulation will affect any unit, part, or division of local government covered by KRS 337.

3. Identity each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulations: KRS 337.530 authorizes this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?: None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?: None.

(c) How much will it cost to administer this program for the first year?: The cost of administering this regulation during the first year will not be minimal and will be the cost of providing translated rates to employers on public works projects where non-English speaking persons are present. The costs to regulated entities within the Commonwealth should be minimal as well, since employers are already required to post wage rates and hours at public work projects, and
can obtain translated rates from the Labor Cabinet on request.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this regulation in subsequent years will be minimal and will consist of providing translated rates to employers on public works projects where non-English speaking persons are present. The costs to regulated entities within the Commonwealth should be minimal as well, since employers are already required to post wage rates and hours at public work projects, and can obtain translated rates from the Labor Cabinet on request.

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

Revenues (+/-): Unknown
Expenditures (+/-): Unknown
Other explanation: None
The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 13, 2009 at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the December 9, 2008 meeting were approved.

Present were:

Members: Senators Alice Forgy Karr, Joey Pendleton, Gary Tapp, and Elizabeth Ton; and Representatives Robert Damron, Danny Ford, Jimmie Lee, Ron Waston, and Leslie Combs.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napper.

Guests: Mike Burleson, Cheryl Lalonde, Board of Pharmacy; Nathan Goldman, Suzette Scheuermann, Board of Nursing; Rick Allen, Karen Alexy, Bob Durberow, Margaret Everson, Jon Gassett, Chet Hayes, Beny Kinnman, Pam Rogers, Mike Timmerman, Cathenne York, Department of Fish and Wildlife Resources; Jory Becker, Melissa Brothers, Barry Etimore, Julia Kaye, Aaron Keady, Division of Water, Steve Lynn, Kentucky Law Enforcement Council, Carlos Cassady, Larry Craig, Trevor Earl, Mark Guiffrida, RTES Janus, Transportation Cabinet; David Stumbo, Labor Cabinet; LaTasha Buckner, Virginia Davis, Danny Reed, Stephanie Stumbo, Department of Alcoholic Beverage Control; Johnny Greene, Frank Reed, Michael Haines, Office of Mine Safety and Licensing; David Hurt, DJ Wasson, Department of Insurance; Patricia Cooksey, Marc Guiffrida, Bill Napper, Kentucky Horse Racing Commission; Elizabeth Caywood, Justin Dearinger, David Gutierrez, Jeanne Keen, Department for Community Based Services; Shad Sullivan, Steve Vero, Department for Income Support.

The Administrative Regulation Review Subcommittee met on Tuesday, January 13, 2009, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:105. Licensing and drug distribution requirements for wholesale distributors. Mike Burleson, executive director, and Cheryl Lalonde, board counsel and assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 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.

Board of Nursing: Board

201 KAR 20 161. Investigation and disposition of complaints. Nathan Goldman, general counsel, represented the board.

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

301 KAR 1:125. Transportation of fish. Karen Alexy, wildlife director; Margaret Everson, assistant attorney general; Jon Gassett, commissioner; Beny Kinnman, fisheries division director; and Dann Moore, administrative director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete superfluous citations; (2) to amend the STATUTORY AUTHORITY paragraph to make a technical correction; (3) to amend Section 1 to insert a definition for "APHIS-approved laboratory"; (4) to amend Sections 1 and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend Section 3 to clarify that the office is the APHIS Veterinary Services office. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. Chet Hayes, executive director of the United Trappers of Kentucky, appeared in support of this administrative regulation.

Mr. Hayes stated that the United Trappers of Kentucky supported the snare proposals, the bobcat season, and the change to the timing of the close of the season for the purposes of removing trap lines.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add KRS 150.120(4); and (2) to amend Sections 2, 6, and 7 to provide that persons who hold a CCWD may carry a concealed deadly weapon while hunting. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:300. Black bears. Rick Allen, President, League of Kentucky Sportsmen, appeared in support of this administrative regulation.

Pam Rogers, Kentucky State Director of the Humane Society of the United States, and Mike Timmerman appeared in opposition to this administrative regulation.

Mr. Gassett stated that the department had never opened a season in error to the detriment of an entire species, and he requested that the administrative regulation become effective in Kentucky.

Mr. Allen stated that the League of Kentucky Sportsmen supported the proposed bear season.

Mr. Timmerman stated that this administrative regulation prohibited non-CCWD permittees from carrying firearms during archery and muzzleloader seasons. He stated that hunters should have the right to carry firearms, regardless of the season, for safety or self defense. He also stated his opinion that the department violated Section 1, Part 7 of the Constitution of the United States. He further stated that Section 26 of the Constitution of the United States applied, and that KRS 150.120 was therefore unconstitutional. He proposed revisions to department administrative regulations to state that "a hunter shall not use a firearm to harvest," rather than "a hunter shall not possess a firearm."

Ms. Rogers stated that, in her capacity as Kentucky State Director of the Humane Society of the United States, she had rarely appeared in opposition to the Department of Fish and Wildlife Resources. However to protect the black bear, the professionals at the United States Humane Society disagreed with the professionals at the department that the black bear population was resilient enough to withstand the hunting authorized by this proposal. She also stated that the department proposed to allow black bear hunting in an area previously protected. She stated that failure to protect this area may put females and cubs at added risk. She requested that the subcommittee find this administrative regulation deficient.

In response to a question by Co-Chair Damron, Mr. Moore stated that the proposed amendment did allow a permittee with a CCWD to carry a concealed or unincorporated firearm pursuant to KRS 237.110.

Mr. Gassett stated that the department was not opposed to firearms or to the second amendment to the Constitution of the United States.
and that the department planned to develop a task force to address statutory language during the current legislative session. He also stated that this administrative regulation protected female black bears and cubs because the proposed hunting season would be during the time when the females and cubs would be expected to be in their dens. He further stated that there would still be other areas that were completely protected.

Co-Chair Damon stated that KRS 150.120 probably was unconstitutional, but that the matter needed to be determined by the Judicial Branch. He stated that the department needed to rewrite some of their statutes and administrative regulations.

Representative Lee stated that he believed that issues on constitutionality existed and that the department needed to rewrite some of their statutes and administrative regulations to comply with the second amendment to the Constitution of the United States.

Co-Chair Damon stated that he shared Representative Lee’s opinions on this matter and that the Department for Fish and Wildlife Resources had committed to developing language to conform to the Constitution of the United States during this legislative session.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add KRS 150.120(4); (2) to amend Section 6 to provide that a person holding a CCDW may carry a deadly weapon while hunting but may not use that weapon to take wildlife unless that weapon is authorized for the taking of wildlife; and (3) to amend Sections 1, 3, 5, and 8 through 11 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing
301 KAR 3.022. License, tag, and permit fees

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality
401 KAR 5:010. Operation of wastewater systems by certified operators. Joey Becker, branch manager, and Aaron Keatley, division director, represented the cabinet.

In response to questions by Representative Ford, Mr. Keatley stated that all wastewater treatment facilities currently were required to have a certified operator. He stated that only collection systems were not previously required to have a certified operator and would be required to have one (1) as a result of these amendments. He also stated that the cabinet was not aware of the exact number of facilities without a certified operator. He explained that this proposed amendment resulted from infrastructure deterioration, numerous systems that recently entered into agreed orders, and recent spills and penalties. Mr. Keatley stated that the federal government was also considering regulating collection systems more vigorously.

Certified Operators
401 KAR 11:001. Definitions for 401 KAR Chapter 11.

401 KAR 11.010. Board of certification.
A motion was made and seconded to approve the following amendments to amend Section 1 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 11.020. Standards of professional conduct for certified operators.
A motion was made and seconded to approve the amendment to amend Section 1 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 11:030. Wastewater treatment and collection operators-classification and qualification.

In response to questions by Representative Ford, Mr. Keatley stated that Kentucky’s fees for examination and renewal were consistent with other states, and that the examination fee was $100 and the biannual renewal fee was fifty (50) dollars. He stated that the current renewal fee was thirty-five (35) dollars.

In response to questions by Senator Tapp, Mr. Keatley stated that enforcement of the new requirements would not begin immediately, but that facilities would have a grace period in which to prepare. He stated that the cabinet would conduct multiple testing events per month and that they expected to test approximately 1,000 persons during the next year.
In response to a question by Senator Kerr, Mr. Keatley stated that facilities had been notified of the changes by Rural Water and other professional associations and through newsletters and routine training provided by the cabinet.


JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council: Council
503 KAR 1:170. Career Development Program. Steve Lynn, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to add an application form for a "Telecommunications Supervisor"; (2) to amend Section 4 for clarification; (3) to amend Section 22 to add a uniform lapel pin as an item to be issued along with a certificate for peace officers or telecommunicators who have completed a career development step; (4) to amend Section 24 to add forms incorporated by reference and to revise edition dates; and (5) to amend Sections 1 through 3 and 19 through 21 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Commission
605 KAR 1:060. Temporary off-site sale or display event. Carlos Cassady, executive director; LarryCraig, director; and Trevor L. Earl, legal counsel, represented the commission. Mark Guiffoye, attorney on behalf of Karry Automotive, and Ron Jackson, President of the Kentucky Automobile Dealer Association, appeared in opposition to this administrative regulation.

Mr. Guiffoye stated that Franklin Circuit Court Judge Thomas Wingate determined in a preliminary decision that the five (5) mile rule established by KRS 100.047 did not apply to temporary dealerships sites. He requested that the administrative regulation be changed to comply with that decision.

Mr. Earl stated that Judge Wingate had not submitted a final decision and the administrative regulation only applied to the sale of new cars to reflect franchise laws.

Mr. Jackson stated that members of the Kentucky Automobile Dealer Association were concerned about the $500 fee, but understood the fee was needed for inspections. There was also concern about the title availability requirement since titles were not always readily availa-

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ble. The association did not consider the "5-mile rule" to be an issue.
Representative Lee stated that this administrative regulation was very important in order to protect consumers regarding temporary sales sites, such as tent sales. He also recommended that the cabinet work with local dealers and associations if future changes to this administrative regulation were needed.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 2 to incorporate by reference the updated edition of the "ABC Table of License Expiration Dates by Zip Code". Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION AND REGULATION CABINET: Department of Alcoholic Beverage Control: Licensing
804 KAR 4:370. Entertainment destination center license. LaTasha Buckner, general counsel; Virginia Davis, internal policy analyst; and Danny Reed, distilled spirits administrator, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 2 to incorporate by reference the updated edition of the "ABC Table of License Expiration Dates by Zip Code". Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:390. License renewals.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 2 to incorporate by reference the updated edition of the "ABC Table of License Expiration Dates by Zip Code". Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 4:400 ABC basic application form incorporated by reference.
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 clarify the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 3 to incorporate by reference the updated edition of the "Basic Application for Alcoholic Beverage Licenses." Without objection, and with agreement of the agency, the amendments were approved.
QUOTES

804 KAR 9:010. Retail liquor license limit.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 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.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources; Office of Mine Safety and Licensing; Miner Training, Education, and Certification

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians. Johnny Green, executive director, Mike Hanes, general counsel; and Franklin Reed, director of training, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 through 4, 6, 7, 9, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the cabinet, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance; Authorization of Insurers and General Requirements

806 KAR 3.170. Annual audited financial reports. Annual audited financial reports. David Hurt, chief financial examiner, and D J Wasson, staff assistant, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 and 5 for clarity; and (4) to amend Sections 1, 2, 5, 6, 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.

Kentucky Horse Racing Commission: Harness Racing
811 KAR 1:075. Racing and track rules. Patricia Cooksey, policy advisor; Marc A Guilfoil, deputy executive director; and Bill Napier, deputy executive secretary, represented the commission.
A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 8, 9, 10, 11, 12, and 18 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 2(1) to delete unnecessary language. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services; Child Abuse and Domestic Violence Services

929 KAR 2:020. Domestic violence batterer intervention provider certification standards. Elizabeth Caywood, policy analyst; David Gutierrez, assistant director; and Jeanne Keen, program administrator, represented the department.
A motion was made and seconded to approve the following amendments. (1) to amend Section 12 to specify that a review or investigation conducted by the cabinet shall include precautions to avoid risk or harm to a client or a domestic violence victim; and (2) to amend Sections 1, 4, 6, 10, 11, and 12 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

921 KAR 1:020. Child support enforcement program; confidentiality, program administration contracts, and agreements. Shari Sullivan, internal policy analyst, and Steve Veno, deputy commissioner, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to delete references to a repealed statute; (2) to amend Section 1 to add a definitions section; and (3) to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:390. Child support enforcement program paternity establishment.
A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to correct statutory and regulatory citations. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.
A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to delete unnecessary or duplicative language; and (2) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

OTHER BUSINESS:
Co-Chair Damron introduced Representative Leslie Combs. He stated that Representative Weston would be leaving the subcommittee and Representative Combs would be joining the subcommittee in February. He also introduced Senator Elizabeth Tori. Senator Tapp made a motion, seconded by Senator Pendleton, that Senator Tori be nominated for Senate Co-Chair. Senator Tori accepted the nomination. Senator Tapp made a motion, seconded by Senator Pendleton, to end Senate Co-Chair nominations. Senator Elizabeth Tori was unanimously endorsed as Senate Co-Chair of the subcommittee.
The following administrative regulations were deferred to the February 9, 2009, meeting of the Subcommittee:

**GENERAL GOVERNMENT CABINET: Board of Nursing: Board**
201 KAR 20.400. Delegation of nursing tasks.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**
301 KAR 2:083 & E. Holding and intrastate transportation of captive cervids.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply**
401 KAR 8 010. Definitions for 401 KAR Chapter 8
401 KAR 8.020. Public and semipublic water supplies; general provisions.
401 KAR 8.061. Repeal of 401 KAR 8:060, 8:162, 8:350, 8:400, and 8:420.
401 KAR 8.070. Public notification.
401 KAR 8.075. Consumer confidence reports.
401 KAR 8.150. Disinfection, filtration, and recycling.
401 KAR 8 200 Microbiological monitoring
401 KAR 8 250 Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels.
401 KAR 8.300 Lead and copper.

**Water Quality Standards**
401 KAR 10 026. Designation of uses of surface waters.
401 KAR 10.029. General provisions.
401 KAR 10 030. Antidegradation policy implementation methodology.
401 KAR 10.031. Surface water standards.

**COUNCIL ON POSTSECONDARY EDUCATION: Council**
765 KAR 1.010 GED Testing Program.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Workforce Investment: Office of Employment and Training: Unemployment**
787 KAR 1.090. Unemployed worker's reporting requirements.

**ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Office of Mine Safety and Licensing: Division of Mining**
805 KAR 5 030. Prohibition against working or traveling under an unsupported roof, penalties.

**Miner Training, Education, and Certification**
805 KAR 7 060. Program approval.

**Office of Mine Safety and Licensing**
805 KAR 8.060. Criteria for the imposition and enforcement of sanctions against licensed premises.

**PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing**
810 KAR 1.015. Claiming races.

**Harness Racing**
811 KAR 1.070 & E. Licensing standardbred racing.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services**
907 KAR 1 645. Resource standards for Medicaid.
907 KAR 1.650. Trust and transferred resource requirements for Medicaid.
907 KAR 1.655. Spousal impoverishment and nursing facility requirements for Medicaid.

**Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**
921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program.
921 KAR 2:017. Kentucky works supportive services.

The Subcommittee adjourned at 11:30 p.m. until February 9, 2009.
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.

NONE
LOCATOR INDEX - EFFECTIVE DATES

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

KRS INDEX

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 35 of the Administrative Register.

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations which have had technical, 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.
### LOCTOR INDEX - EFFECTIVE DATES

**VOLUME 34**

The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(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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** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register

(§) Repealer regulation. KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.
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Registration of apprenticeship programs; 803 KAR 1:010
Occupational Safety and Health
General; 803 KAR 2:300
General environmental control; 803 KAR 2:309
Hand and portable powered tools and other hand-held equipment; 803 KAR 2:315
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Occupational health and environmental controls; 803 KAR 2:306
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Recordkeeping; reporting; statistics; 803 KAR 2:180
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