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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tem-
tatively scheduled to meet March 9, 2009 at 10:00 a.m. in room
of this Administrative Register.
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, March 9, 2009, at a.m., Room 149 Capitol Annex

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions
13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

PERSONNEL CABINET

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FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

General Rules
102 KAR 1:070. Application for retirement.
102 KAR 1:105. 401(h) Account established under 26 U.S.C. 401(h).
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102 KAR 1:230. Limitations on benefits.
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102 KAR 1:245. Rollovers and transfers of contributions to other plans.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue
Office of Income Taxation

Forms
103 KAR 3:040 & E. Income tax forms manual. (*E* expires 7/14/09)

FINANCE AND ADMINISTRATION CABINET

Kentucky Employees' Retirement System

General Rules
105 KAR 1:370. Kentucky retirement systems personnel policies. (Deferred from February)
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GENERAL GOVERNMENT CABINET

Kentucky Board of Pharmacy

Board
201 KAR 2:050. Licenses and permits; fees.

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.)

Board of Examiners and Registration of Landscape Architects

Board
201 KAR 10:050. Fees.

Kentucky State Board of Hairdressers and Cosmetologists

Board
201 KAR 12:105. School districts. (Comments Received)

Board of Barbering

Board
201 KAR 14:051. Supervision of apprentice licensees.

Kentucky Board of Veterinary Examiners

Board
201 KAR 16:015. Fees. (Deferred from February)

Board of Architects

Board
201 KAR 19.035. Qualifications for examinations and licensures.
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Board of Nursing

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

Board of Physical Therapy

Board
201 KAR 22:020. Eligibility and credentialing procedure. (Deferred from February)
201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant. (Deferred from February)
201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. (Deferred from February)

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401 KAR 10:026. Designation of uses of surface waters. (Amended After Comments) (Deferred from October)
401 KAR 10:029. General provisions. (Amended After Comments) (Deferred from October)
401 KAR 10:030. Antidegradation policy implementation methodology. (Amended After Comments) (Deferred from October)
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ENERGY AND ENVIRONMENT CABINET
Division of Waste Management

METHAMPHETAMINES
401 KAR 101.001. Definitions for 401 KAR Chapter 101.
401 KAR 101.010. Contractor certification.
401 KAR 101.020. Financial requirements.
401 KAR 101.030. Tiered response system.
401 KAR 101.040. Cleanup and sampling requirements.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council

COUNCIL
503 KAR 1:140. Peace officer, telecommunicator, and court security officer: professional standards. (Deferred from February)

Department of Juvenile Justice
Division of Placement Services

CHILD WELFARE
505 KAR 1:100 & E. Department of Juvenile Justice Policies and Procedures: admissions. (*E* expires 7/14/09)

EDUCATION CABINET
Kentucky Board of Education
Department of Education

SCHOOL ADMINISTRATION AND FINANCE
702 KAR 3 090. Depository bond, penal sum. (Deferred from February)

EDUCATION AND WORKPLACE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Career and Technical Education?

GENERAL ADMINISTRATION
780 KAR 1:010. Kentucky state plan for career and technical education. (Deferred from February)

MANAGEMENT OF THE KENTUCKY TECH SYSTEM
780 KAR 2:010. Administration of area technology centers. (Deferred from February)
780 KAR 2:030. Steering and advisory committees for area technology centers primarily serving secondary students.
780 KAR 2:040. Live work projects.
780 KAR 2:060. Discipline of students. (Deferred from February)
780 KAR 2:110. Student medical and accident insurance. (Deferred from February)
780 KAR 2:140. Tuition and fees. (Deferred from February)
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PERSONNEL SYSTEM FOR CERTIFIED AND EQUIVALENT EMPLOYEES
780 KAR 3:010. Classification plan. (Deferred from February)
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780 KAR 3:035. Employee evaluations. (Deferred from February)
780 KAR 3:040. Special appointments. (Deferred from February)
780 KAR 3:050. Employment lists. (Deferred from February)
780 KAR 3:060. Probationary periods.
780 KAR 3:065. Certified and equivalent service administrative regulation.
780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.
780 KAR 3:075. Sick leave sharing procedures for certified and equivalent service.
780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.
780 KAR 3:090. Records and reports.
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780 KAR 3:110. Disciplinary actions.
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780 KAR 3:160. Local school district service credit.

INSTRUCTIONAL PROGRAMS
780 KAR 4:010. General standards.
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Adult Education and Literacy
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Department of Workplace Standards
Division of Employment Standards; Apprenticeship Programs

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Division of Occupational Safety and Health Compliance
Department for Natural Resources

Occupational Safety and Health

Department of Workers’ Claims
803 KAR 25:091. Workers’ compensation hospital fee schedule. (Comments Received)

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)

Sanctions and Penalties
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. (Comments Received)

Agents, Consultants, Solicitors and Adjusters
806 KAR 8:070. Examinations. (Deferred from February)
806 KAR 8:310. Life settlement broker license and notification. (Deferred from February)
806 KAR 8:320. Life settlement provider license. (Deferred from February)

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

Health Insurance Contracts
806 KAR 17:083. Kentucky long-term care partnership insurance program. (Comments Received)
806 KAR 17:480. 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)

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

Division of Breeders’ Incentives

Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:120 & E. Kentucky Horse Breeders’ Incentive fund. (*E* expires 6/29/09)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

State Health Plan
900 KAR 5:020. State health plan for facilities and services.
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Office of the Inspector General

Health Services and Facilities
902 KAR 20:106 & E. Operation and services; ambulatory surgical center. (*E* expires 7/4/2009)

Department for Public Health

Food and Cosmetics
902 KAR 4:005. Kentucky Food Code. (Comments Received, SOC ext.)

Department for Medicaid Services
Division of Community Alternatives

Medicaid Services
907 KAR 1:585. Estate recovery. (Amended After Comments) (Deferred from February)
907 KAR 1:645. Resource standards for Medicaid. (Deferred from January)
907 KAR 1:550. 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)

Payment and Services
907 KAR 3:170. Telehealth services and reimbursement.
907 KAR 3:210 & E. Acquired brain injury long term care waiver services and reimbursement. (*E* expires 6/6/2009) (Comments Received, SOC ext.)

Department for Aging and Independent Living

Guardianship
910 KAR 2:020. Referral process for adult guardianship. (Comments Received)
910 KAR 2:030. Accounting provisions for adult guardianship. (Comments Received)
910 KAR 2:040. Service provisions for adult guardianship. (Deferred from February)
910 KAR 2:050. Compensation for guardianship program services. (Deferred from February)

Brain Injury
910 KAR 3:020. Behavioral services for individuals with brain injuries. (Comments Received)

Department for Community Based Services

K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:015 & E. Supplemental programs for persons who were aged, blind, or have a disability. (*E* expires 7/4/2009)

Energy Assistance Program/Weatherization
921 KAR 4:116 & E. Low income home energy assistance program or "LIHEAP". (*E* expires 6/20/2009)

DEFERRED OR REMOVED DUE TO COMMENTS TO APRIL 2009 AGENDA

GENERAL GOVERNMENT CABINET
Board of Licensure for Marriage and Family Therapists

Board
201 KAR 32:020. Equivalent course of study. (Comments Received, SOC ext.)
201 KAR 32:025. Marriage and family therapists associate. (Comments Received, SOC ext.)
201 KAR 32:030. Fees. (Comments Received, SOC ext.)
201 KAR 32:035. Supervision of marriage and family therapist associates. (Comments Received, SOC ext.)
201 KAR 32:042. Repeal of 201 KAR 32:042. (Comments Received, SOC ext.)
201 KAR 32:070. Complaint procedure. (Comments Received, SOC ext.)

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 6/28/09) (Comments Received, SOC ext.)

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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.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(As Amended by ARRS, December 8, 2008)

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5707, 205.635, 42 C.F.R. 440.180
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396d, 1396d-1, 1395n
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 to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.
(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20.065.
(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.
(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.
(5) "Assessment team" means a team which:
(a) Conducts assessment or reassessment services; and
(b) Consists of:
   1. Two (2) registered nurses; or
   2. One (1) registered nurse and one (1) of the following:
      a. A social worker;
      b. A certified psychologist with autonomous functioning;
      c. A licensed psychological practitioner;
      d. A licensed marriage and family therapist; or
      e. A licensed professional clinical counselor.
(6) "Behavioral support specialist" means an individual who has:
(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and
(b) At least one (1) year of experience in behavioral programming.
(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.
(8) "Budget allocation" is defined by KRS 205.5605(1).
(9) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.
(10) "Communicable disease" means a disease that is transmitted:
(a) Through direct contact with an infected individual;
(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or
(c) Indirectly by a carrier of infectious agents and disease that transfers genetic material from one (1) location to another.
(11) "Consumer" is defined by KRS 205.5505(2).
(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:
(a) Assist with the design of their programs;
(b) Choose their providers of services; and
(c) Direct the delivery of services to meet their needs.
(13) "Covered services and supports" is defined by KRS 205.5605(3).
(14) "DCBS" means the Department for Community Based Services.
(15) "Department" means the Department for Medicaid Services or its designee.
(16) "Developmental disability" means a severe, chronic disability that:
(a) Is attributable to:
   1. Cerebral palsy or epilepsy; or
   2. Any other condition, excluding mental illness, closely related to mental retardation resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with mental retardation and which requires treatment or services similar to those required by persons with mental retardation;
(b) Is manifested prior to the individual's 22nd birthday;
(c) Is likely to continue indefinitely; and
(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:
   1. Self-care;
   2. Understanding and use of language;
   3. Learning;
   4. Mobility;
   5. Self-direction; or
(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:
(a) Is eighteen (18) years of age or older; and
(b) Has a high school diploma or GED; or
(c) Is twenty-one (21) years of age or older; and
(d) Is able to communicate with a recipient in a manner that the recipient or recipient's legal representative or family member can understand;
(e) Has a valid Social Security number or valid work permit if not a U.S. citizen;
(f) Can understand and carry out simple instructions;
(g) Has the ability to keep simple records; and
(h) Is supervised by the provider's supervisory staff.
(18) "Electronic signature" is defined by KRS 369.102(6).
(19) "Home health agency" means an agency that:
(a) Is licensed in accordance with KRS 205.081; and
(b) Is Medicare and Medicaid certified.
(20) "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.
(21) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.
(22) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).
(23) "Licensed practical nurse" or "LPN" means a person who:
(a) Meets the definition of KRS 314.011(6); and
(b) Works under the supervision of a registered nurse.
(24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).
(25) "Mental retardation" means an individual has:
(a) Significantly sub-average intellectual functioning;
(b) An intelligence quotient of seventy (70) or below;
(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
   1. Communication;
   2. Self-care;
   3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health and safety; and
(d) Had an onset prior to eighteen (18) years of age.
(26) "Michelle P. recipient" means an individual who:
(a) Is a recipient as defined by KRS 205.845(19);
(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and
(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.
(27) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.
(28) "Occupational therapist" is defined by KRS 319A.010(3).
(29) "Occupational therapy assistant" is defined by KRS 319A.010(4).
(30) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.
(31) "Physical therapist" is defined by KRS 327.010(2).
(32) "Physical therapist assistant" means a skilled health care worker who:
(a) Is certified by the Kentucky Board of Physical Therapy; and
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.
(33) "Physician assistant" or "PA" is defined by KRS 311A.010(3).
(34) "Plan of care" or "POC" means a written individualized plan developed by:
(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;
(b) The case manager or support broker; and
(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.
(35) "Plan of treatment" means a care plan used by an ADHC center.
(36) "Psychologist" is defined by KRS 319.010(8).
(37) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
(38) "Qualified Mental Retardation Professional" or "QMRP" is defined by KRS 2023.010(12).
(39) "Registered nurse" or "RN" means a person who:
(a) Meets the definition established in KRS 314.011(5); and
(b) Has one (1) year or more experience as a professional nurse.
(40) "Representative" is defined by KRS 205.5605(6).
(41) "SCL waiting list individual" means an individual on the Support for Community Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.
(42) "Sex crime" is defined by KRS 17.165(1).
(43) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.
(44) "Speech-language pathologist" is defined by KRS 334A.020(5).
(45) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who:
(a) A. Is eighteen (18) years of age or older; and
b. Has a high school diploma; or
2.a. Is twenty-one (21) years of age or older; and
b. Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;
(b) Is able to adequately communicate with the recipients, staff, and family members;
(c) Has a valid Social Security number or valid work permit if not a U.S. citizen; and
(d) Has the ability to perform required record keeping.
(46) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:
(a) Provide training, technical assistance, and support to a consumer; and
(b) Assist a consumer in any other aspects of CDO.
(47) "Support spending plan" means a plan for a consumer that identifies the:
(a) CDO services requested;
(b) Employee name;
(c) Hourly wage;
(d) Hours per month;
(e) Monthly pay;
(f) Taxes;
(g) Budget allowance; and
(h) Six (6)-month budget.
(48) "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:
(a) Licensed in accordance with:
1. 902 KAR 20:066 if an adult day health care provider;
2. 902 KAR 20:076 if a group home;
3. 902 KAR 20:081 if a home health service provider; or
4. 902 KAR 20:081 if a community mental health center; or
(b) Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.
(2) A Michelle P. waiver service provider shall:
(a) Provide services to Michelle P. waiver recipients:
1. Directly; or
2. Indirectly through a subcontractor;
(b) Comply with the following administrative regulations and program requirements:
1. 907 KAR 1:671;
2. 907 KAR 1:672; and
3. 907 KAR 1:673;
(c) Not enroll a Michelle P. recipient for whom the provider is unqualified or unable to provide Michelle P. waiver services; and
(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:
(a) A clinical record for each Michelle P. recipient that shall contain the following:
1. Pertinent medical, nursing, and social history;
2. A comprehensive assessment entered on form MAP-351 and signed by the:
   a. Assessment team; and
   b. Department;
3. A completed MAP 109;
4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;
5. The name of the case manager;
6. Documentation of all level of care determinations;
7. All documentation related to prior authorizations, including requests, approvals, and denials;
8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;
9. Documentation that the Michelle P. recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;
10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and
11. Documentation of each service provided. The documentation shall include:
   a. The date the service was provided;
   b. The duration of the service;
   c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;
   d. Itemization of each service delivered;
   e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;
   f. Progress notes which shall include documentation of

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changes, responses, and treatments utilized to meet the Michelle P. recipient’s needs; and

4. The recipient’s right to appeal the intendent action through the provider’s appeal or grievance process;

(a) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

(b) Submittal of a MAP-24 to the department at the time of the intendent action; and

1. At least six (6) years from the date that a covered service is provided; or

(c) The case manager or support broker in conjunction with the provider:

2. For a minor, three (3) years after the recipient reaches the age of majority under state law.

1. Provide the recipient with the name, address, and telephone number of each current provider in the state;

2. Upon request, a Michelle P. provider shall make information regarding service and financial records available to the recipient;

3. Provide assistance to the recipient in making contact with another provider;

(a) Department;

4. Arrange transportation for a requested visit to a provider site;

(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;

4. Provide a copy of pertinent information to the recipient or legal representative;

2. United States Department for Health and Human Services or its designee;

3. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;

4. United States Government Accountability Office or its designee;

5. Continue to provide supports until alternative services are secured; and

5. Kentucky Office of the Auditor of Public Accounts or its designee;

6. Provide assistance to ensure a safe and effective service transition.

(i) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:

Section 5. Michelle P. Waiver Service Level of Care Criteria. (1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Without waiver services, be admitted to an ICF-MR-DD or a nursing facility.

(c) Would, without waiver services, be admitted to an ICF-MR-DD or a nursing facility.

(2) The department shall perform a Michelle P. waiver service level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.

(3) A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

2. A hospital; or

3. An environmental and minor home adaptation and case management;

2. A nursing facility; or

(b) Is an inpatient of:

3. An ICF-MR-DD;

(a) A hospital;

(c) Is a resident of a licensed personal care home; or

2. A nursing facility;

(d) Is receiving services from another Medicaid home and community based services waiver program.

(4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal representative of the choice to receive:

(a) Michelle P. waiver services; or

(b) Institutional services.

(5) An eligible Michelle P. recipient or the recipient’s legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.

(6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient’s:

(a) Termination from the Michelle P. waiver program; or

1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecutive days; or

(b)1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecutive days; or

2. Return to the Michelle P. waiver program from an ICF-MR-DD or nursing facility within sixty (60) consecutive days;

(c) Admission to a hospital; or

(d) Transfer to another waiver program within the department.

(7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:

(a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

3. Freeing P. waiver services.

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Section 7. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's family. A CDO service may be provided by a Michelle P. recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 106, MAP 109, and MAP 351 to the department.

(C) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;

2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, QMARP, or ANP;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) A case management service which:

1. Shall consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;

2. Shall be provided by a case manager who shall:

a. Assist the recipient in the selection and arrangement for services not provided by a service directly, except as allowed in subparagraph 8 of this paragraph;

b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient's home, in the ADHC center, or the adult day training provider's location;

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care; and

d. Meet the requirements of subsection (4) of this section;

3. Shall not include a group conference;

4. Shall include development of a plan of care that shall:

a. Be completed on the MAP 109 using Person Centered Planning: Guiding Principles;

b. Reflect the needs of the Michelle P. recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

(g) Be developed and signed by the care manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of the Michelle P. waiver service level of care;

5. Shall include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative;

6. Shall include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services;

7. Shall not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient, except as allowed in subparagraph 8 of this paragraph; and

8. Contingent upon approval by the Centers for Medicare and Medicaid Services and expiring January 1, 2011, may be provided by an agency which also provides any other Michelle P. waiver service to the recipient if the agency meets the provider qualifications established in Section 2 of this administrative regulation and:

a. Provided case management to the recipient in another of the department's waiver programs prior to the establishment of the Michelle P. waiver service program; or

b. Provided other services via the Cabinet for Health and Family Services to the recipient prior to the establishment of the Michelle P. waiver service program.

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;

2. Be provided to a Michelle P. waiver recipient:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaker activities;

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;

2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct-care staff;

4. Be provided to a Michelle P. recipient:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note; and

d. The beginning and ending time of service;

(f) An attendant care service which shall consist of hands-on care that is:

1. Provided by direct-care staff to a Michelle P. waiver recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;

2. Not of a general housekeeping nature;

3. Not provided to a Michelle P. waiver recipient who is receiv-
ing any of the following Michelle P. waiver services:

- Personal care;
- Homemaker;
- ADHC;
- Adult day training;
- Community living supports; or
- Supported employment; and
- Include documentation with a detailed note which shall include:
  - The month, day, and year for the time period each note covers;
  - Progression, regression, and maintenance toward outcomes identified in the plan of care;
  - The signature, date of signature, and title of the individual preparing the note; and
  - Beginning and ending time of service;
- A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:
  - Provided by direct-care staff who provide services at a level which appropriately and safely meet the medical needs of the Michelle P. waiver recipient;
  - Provided to a Michelle P. waiver recipient who has care needs beyond normal baby sitting;
  - Used no less than every six (6) months;
  - Provided in accordance with 902 KAR 20.066, Section 2(1)(b)(10a) through c, if provided to a child under age 21 (twenty-one) in an ADHC center; and
  - Include documentation with a detailed note which shall include:
    - The month, day, and year for the time period each note covers;
    - Progression, regression, and maintenance toward outcomes identified in the plan of care;
    - The signature, date of signature, and title of the individual preparing the note; and
    - The beginning and ending time of service;
- An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:
  - Meet all applicable safety and local building codes;
  - Relate strictly to the Michelle P. waiver recipient’s disability and needs;
  - Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;
  - Be submitted on form MAP-95 for prior authorization; and
  - Include documentation with a detailed note which shall include:
    - The month, day, and year for the time period each note covers;
    - Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - The signature, date of signature, and title of the individual preparing the note;
- An occupational therapy service which shall be:
  - A physician ordered evaluation of a Michelle P. waiver recipient’s level of functioning by applying diagnostic and prognostic tests;
  - Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver recipient in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;
  - Training of other Michelle P. waiver providers on improving the level of functioning;
  - Exclusive of maintenance or the prevention of regression;
  - Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 29:130; and
- Documented with a detailed staff note which shall include:
  - The month, day, and year for the time period each note covers;
  - Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - The signature, date of signature, and title of the individual preparing the note;
- Physical therapy which shall:
  - Be a physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;
  - Be physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;
  - Include training of other Michelle P. waiver providers on improving the level of functioning;
  - Be exclusive of maintenance or the prevention of regression;
  - Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and
- Be documented with a detailed monthly summary note which shall include:
  - The month, day, and year for the time period each note covers;
  - Progression or lack of progression toward outcomes identified in the plan of care; and
  - The signature, date of signature, and title of the individual preparing the note;
- Speech therapy which shall:
  - Be a physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;
  - Be a physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;
  - Include training of other Michelle P. waiver providers on improving the level of functioning;
  - Be provided by a speech-language pathologist; and
  - Be documented with a detailed monthly summary note which shall include:
    - The month, day, and year for the time period each note covers;
    - Progression, regression, and maintenance toward outcomes identified in the plan of care; and
    - The signature, date of signature, and title of the individual preparing the note;
- An adult day training service which shall:
  - Support the Michelle P. waiver recipient in daily, meaningful routines in the community;
  - Stress training in:
    - The activities of daily living;
    - Self-advocacy;
    - Adaptive and social skills; and
    - Vocational skills;
  - Be provided in a community setting which may:
    - Be a fixed location; or
    - Occur in public venues;
  - Not be devotional in nature;
  - If provided on site:
    - Include facility-based services provided on a regularly-scheduled basis;
    - Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or
    - Prepare the recipient for transition from school to work or adult support services;
  - If provided off site:
    - Include services provided in a variety of community settings;
    - Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
    - Be designed to result in increased ability to access community resources without paid supports;
    - Provide the opportunity for the recipient to be involved with other members of the general population; and
    - Be provided as:
      - An enclave or group approach to training in which recipients work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;
      - A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or
(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;

10.a. Be provided to recipients age twenty-two (22) or older; or
b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services; and

11. Be documented with:
   a. A detailed monthly summary note which shall include:
      (i) The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
   c. The signature, date of signature, and title of the individual preparing the note; and
   d. A time and attendance record which shall include:
      (i) The date of service;
      (ii) The beginning and ending time of the service;
      (iii) The location of the service; and
   e. The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service which shall:
   1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;
   2. Include attending to a recipient’s personal care needs;
   3. Be provided in a variety of settings;
   4. Be provided on a one-to-one basis;
   5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 389), proof of which shall be documented in the Michelle P. waiver recipient’s file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented by:
   a. A detailed monthly summary note which shall include:
      (i) The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
   c. The signature, date of signature, and title of the individual preparing the note; and
   d. A time and attendance record which shall include:
      (i) The date of service;
      (ii) The beginning and ending time of the service;
      (iii) The location of the service; and
   e. The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service which shall:
   1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
   2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
   3. Include a functional assessment of the Michelle P. waiver recipient’s behavior which shall include:
      a. An analysis of the potential communicative intent of the behavior;
      b. The history of reinforcement for the behavior;
      c. Critical variables that preceded the behavior;
      d. Effects of different situations on the behavior; and
   e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;
   4. Include the development of a behavioral support plan which shall:
      a. Be developed by the behavioral specialist;
      b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
      c. Be revised as necessary;
      d. Define the techniques and procedures used;
      e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
      f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
      g. Reflect the use of positive approaches; and
   h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a Michelle P. recipient’s progress which shall be accomplished by:
   a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
   b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented by a detailed staff note which shall include:
   a. The date of service;
   b. The beginning and ending time; and
   c. The signature, date of signature, and title of the behavioral specialist;

(o) An ADHC service which shall:
   1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:
   a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, doubsilus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
   b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
   c. Snacks;
   d. Supervision by an RN;
   e. Age and diagnosis appropriate daily activities; and
   f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:
      (i) Monitoring of vital signs;
      (ii) Assistance with activities of daily living; and
   (a) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:
   a. A physician;
   b. A physician assistant;
   c. An ARNP;
   d. An RN;
   e. A LPN;
   f. An activities director;
   g. A physical therapist;
   h. A physical therapist assistant;
   i. An occupational therapist;
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j. An occupational therapist assistant;
k. A speech pathologist;
l. A social worker;
m. A nutritionist;
n. A health aide;
o. An LPCC;
p. An LMFT;
q. A certified psychologist with autonomous functioning; or
r. A licensed psychological practitioner; and
6. Be provided pursuant to a plan of treatment. The plan of
treatment shall:
a. Be developed and signed by each member of the plan of
treatment team which shall include the recipient or a legal repre-
sentative of the recipient;
b. Include pertinent diagnoses, mental status, services re-
quired, frequency of visits to the ADHC center, prognosis, rehabili-
tation potential, functional limitation, activities permitted, nutritional
requirements, medication, treatment, safety measures to protect
against injury, instructions for timely discharge, and other pertinent
information; and
c. Be developed annually from information on the MAP 351
and revised as needed; and
(d) Community living supports which shall:
1. Be provided to facilitate independence and promote integra-
tion into the community for an SCL recipient residing in his or her
own home or in his or her family's home;
2. Be supports and assistance which shall be related to chosen
outcomes and not be diversional in nature. This may include:
a. Routine household tasks and maintenance;
b. Activities of daily living;
c. Personal hygiene;
d. Shopping;
e. Money management;
f. Medication management;
g. Socialization;
h. Relationship building;
i. Leisure choices;
j. Participation in community activities;
k. Therapeutic goals; or
l. Nonmedical care not requiring nurse or physician interven-
tion;
3. Not replace other work or day activities;
4. Be provided on a one-on-one basis;
5. Not be provided at an adult day-training or children's day-
habilitation site;
6. Be documented by:
a. A time and attendance record which shall include:
   (i) The date of the service;
   (ii) The beginning and ending time of the service; and
   (iii) The signature, date of signature, and title of the individual
       providing the service; and
b. A detailed monthly summary note which shall include:
   (i) The month, day, and year for the time period each note
covers;
   (ii) Progression, regression, and maintenance toward out-
comes identified in the plan of care; and
   (iii) The signature, date of signature, and title of the individual
       preparing the summary note; and
7. Be limited to sixteen (16) hours per day alone or in combina-
tion with adult day training, and supported employment.
   (4) A case manager shall:
   (a) Have a bachelor's degree from an accredited institution in a
       human services field and be supervised by:
       (i) A GMRF;
   2. A registered nurse who has at least two (2) years of expe-
       rience working with individuals with mental retardation or a de-
       velopment disability;
   3. An individual with a bachelor's degree in a human service
       field who has at least two (2) years of experience working with
       individuals with mental retardation or a developmental disability;
   4. A qualified social worker who has at least two (2) years of
       experience working with individuals with mental retardation or a
       developmental disability;
   5. A licensed marriage and family therapist who has at least
two (2) years of experience working with individuals with mental
   retardation or a developmental disability;
   6. A licensed professional clinical counselor who has at least
two (2) years of experience working with individuals with mental
   retardation or a developmental disability;
   7. A certified psychologist who has at least two (2) years of
   experience working with individuals with mental retardation or a
   developmental disability; or
   8. A licensed psychological practitioner who has at least two
   (2) years of experience working with individuals with mental retard-
   ation or a developmental disability;
   (b) Be an RN;
   (c) Be an LPN;
   (d) Be a qualified social worker;
   (e) Be an LMFT;
   (f) Be an LPCC;
   (g) Be a certified psychologist; or
   (h) Be a licensed psychological practitioner.

Section 8. Consumer-Directed Option. (1) Covered services and
supports provided to a Michelle P. waiver recipient participat-
ing in CDO shall be nonmedical and include:
(a) A home and community support service which shall:
   1. Be available only under the consumer-directed option;
   2. Be provided in the consumer's home or in the community;
   3. Be based upon therapeutic goals and not diversional in
      nature;
   4. Not be provided to an individual if the same or similar ser-
      vice is being provided to the individual via non-CDO Michelle P.
      waiver services; and
   5. Include:
      a. Assistance, support or training in activities including meal
         preparation, laundry, or routine household care of maintenance;
      b. Activities of daily living including bathing, eating, dressing,
         personal hygiene, shopping, or the use of money;
      c. Reminding, observing, or monitoring of medications;
      d. Nonmedical care which does not require a nurse of physi-
         cian Intervention;
      e. Respite;
      f. Socialization, relationship building, leisure choice or partici-
         pation in generic community activities.
(b) Goods and services which shall:
   1. Be individualized;
   2. Be utilized to reduce the need for personal care or to en-
      hence independence within the home or community of the recip-
ent; and
   3. Not include experimental goods or services; and
   4. Not include chemical or physical restraints;
   (c) A community day support service which shall:
   1. Be available only under the consumer-directed option;
   2. Be provided in a community setting;
   3. Be tailored to the consumer's specific personal outcomes
      related to the acquisition, improvement, and retention of skills and
      abilities to prepare and support the consumer for work or commu-
      nity activities, socialization, leisure, or retirement activities;
   4. Be based upon therapeutic goals and not be diversional in
      nature; and
   5. Not be provided to an individual if the same or similar ser-
      vice is being provided to the individual via non-CDO Michelle P.
      waiver services; or
   (d) Financial management which shall:
   1. Include managing, directing, or dispensing a consumer's
      funds identified in the consumer's approved CDO budget;
   2. Include payroll processing associated with the individuals
      hired by a consumer or consumer's representative;
   3. Include withholding local, state, and federal taxes and mak-
      ing payments to appropriate tax authorities on behalf of a con-
sumer;
   4. Be performed by an entity:
      (i) Enrolled as a Medicaid provider in accordance with 907 KAR
          1.672; and
      (ii) With at least two (2) years of experience working with indi-
          viduals possessing the same or similar level of care needs as
          those referenced in Section 5 of this administrative regulation;
5. Include preparing fiscal accounting and expenditure reports for:
   a. A consumer or consumer’s representative; and
   b. The department.

2. To be covered, a CDO service shall be specified in a plan of care.

3. Reimbursement for a CDO service shall not exceed the department’s allowed reimbursement for the same or similar service provided in a non-CDO Michelle P waiver setting, except that respite may be provided in excess of the cap established in Section 12(2)(c) of this administrative regulation if:
   a. Necessary per the consumer’s plan of care; and
   b. Approved by the department in accordance with subsection (13) of this section.

4. A consumer, including a married consumer, shall choose providers and a consumer’s choice shall be reflected or documented in the plan of care.

5. A consumer may designate a representative to act on the consumer’s behalf. The CDO representative shall:
   a. Be twenty-one (21) years of age or older;
   b. Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
   c. Be appointed by the consumer on a MAP 2000 form.

6. A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.

7. The department shall immediately terminate a consumer from CDO services if:
   a. An imminent danger to the consumer’s health, safety, or welfare exists;
   b. The consumer fails to pay patient liability;
   c. The recipient’s plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient’s safety and welfare due to being left alone without a caregiver present; or
   d. The recipient, caregiver, family, or guardian threaten or interfere with a support broker or other CDO service.

8. The department may terminate a consumer from CDO services if it determines that the consumer’s CDO provider has not adhered to the plan of care.

9. Prior to a consumer’s termination from CDO services, the support broker shall:
   a. Notify the assessment or reassessment service provider of potential termination;
   b. Assist the consumer in developing a resolution and prevention plan;
   c. Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;
   d. Complete, and submit to the department, a MAP 2000 terminating services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
   e. Assist the consumer in transitioning back to traditional Michelle P. waiver services.

10. Upon an involuntary termination of CDO services, the department shall:
   a. Notify a consumer in writing of its decision to terminate the consumer’s CDO provider; and
   b. Inform the consumer of the right to appeal the department’s decision in accordance with Section 13 of this administrative regulation.

11. A CDO provider shall:
   a. Be selected by the consumer;
   b. Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
   c. Be eighteen (18) years of age or older;
   d. Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
   e. Be able to communicate effectively with the consumer, consumer representative, or family;
   f. Be able to understand and carry out instructions;
   g. Be able to keep records as required by the consumer;
   h. Submit to a criminal background check;
   i. Submit to a check of the nurse aide abuse registry maintained in accordance with 905 KAR 1:100 and not be found on the registry;

   j. Not have plead guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.155(1) or (3);
   k. Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;
   l. Be approved by the department;
   m. Maintain and submit timesheets documenting hours worked; and
   n. Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

12. A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

13. The department shall establish a twelve (12) month budget for a consumer based on the consumer’s plan of care.

   a. A consumer’s twelve (12) month budget shall not exceed $40,000 unless:

   1. The consumer’s support broker requests a budget adjustment to a level higher than $40,000; and
   2. The department approves the adjustment.

   b. The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

   1. If the proposed services are necessary to prevent imminent institutionalization;
   2. The cost effectiveness of the proposed services;
   3. Protection of the consumer’s health, safety, and welfare; and
   4. If a significant change has occurred in the recipient’s:
      a. Physical condition, resulting in additional loss of function or limitation to activities of daily living and instrumental activities of daily living;
      b. Natural support system; or
      c. Environmental living arrangement, resulting in the recipient’s relocation.

   c. A consumer’s twelve (12) month budget may encompass support services or any combination of services listed in subsection (1) of this section, if each service is established in the consumer’s plan of care and approved by the department.

   14. Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered by traditional (non-CDO) waiver services.

15. A support broker shall:
   a. Provide needed assistance to a consumer with any aspect of CDO or blended services;
   b. Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;
   c. Comply with all applicable federal and state laws and requirements;
   d. Continually monitor a consumer’s health, safety, and welfare;
   e. Complete or revise a plan of care using person-centered planning principles.

16. A support broker or case manager may conduct an assessment or reassessment for a CDO participant; and

   b. A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

   2. The limit referenced in subsection (1) of this section shall

   a. Be an overall limit applied to all services whether CDO services, Michelle P. waiver services not provided via CDO, or a combination of CDO and Michelle P. waiver services; and
   b. Shall equal $65,000 per year.

Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

   2. There shall be three (3) classes of incidents including:
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(a) A class I incident which shall:
1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider agency;
3. Be reported to the case manager or support broker within twenty-four (24) hours;
4. Be reported to the guardian as directed by the guardian; and
5. Be retained on file at the provider and case management or support brokerage agency.
(b) A class II incident which shall:
1. Be serious in nature;
2. Involve the use of physical or chemical restraints;
3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;
4. Be reported by the provider agency to:
   a. The case manager or support broker within twenty-four (24) hours;
   b. The guardian within twenty-four (24) hours;
   c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and
   (c) A class III incident which shall:
   1. a. Be grave in nature;
   b. Involve suspected abuse, neglect, or exploitation;
   c. Involve a medication error which requires a medical intervention; or
   d. Be a death.
2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and
3. Be reported by the provider agency to:
   a. The case manager or support broker within eight (8) hours of discovery;
   b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;
   c. The guardian within eight (8) hours of discovery; and
   d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.
3. Documentation with a complete written report for a death shall include:
   a. The recipient's current plan of care;
   b. The recipient's current list of prescribed medications including pro re nata (PRN) medications;
   c. The recipient's current crisis plan;
   d. Medication administration review forms for the current and previous month;
   e. Staff notes from the current and previous month including details of physician and emergency room visits;
   f. Any additional information requested by the department necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider;
   g. A coroner's report when received; and
   h. If performed, an autopsy report when received.
4. All medication errors shall be reported to the department on a Michelle P. Waiver Medication Error Report by the 15th of the following month.

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(a) A home health provider that chooses to use electronic signatures shall:
1. Develop and implement a written security policy that shall:
   1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
   2. Identify each electronic signature for which an individual has access; and
   3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
2. Develop a consent form that shall:
   1. Be completed and executed by each individual using an electronic signature;
   2. Attest to the signature's authenticity; and
   3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
   (c) Provide the department with:
   1. A copy of the provider's electronic signature policy;
   2. The signed consent form; and
   3. The original filed signature immediately upon request.

Section 12. Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:
(a) Homemaker;
(b) Personal care;
(c) Attendant care;
(d) Supported employment;
(e) Adult day health care;
(f) Adult day training;
(g) Community living supports;
(h) Physical therapy;
(i) Occupational therapy;
(j) Speech therapy; and
(k) Behavior supports.
(2) Respite services shall not exceed $4,000 per member, per calendar year.
(3) Environmental and minor home adaptation services shall not exceed $500 per member, per calendar year.
(4) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.
(b) The following rates shall be the fixed upper payment rate limits:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Payment Rate Limit</th>
<th>Unit of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>$50.00</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Respite</td>
<td>$4,000 per calendar year</td>
<td></td>
</tr>
<tr>
<td>Homemaker</td>
<td>$6.50</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Personal Care</td>
<td>$7.50</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Attendant Care</td>
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<td>15 minutes</td>
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<tr>
<td>Supported Employment</td>
<td>$3.54</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>$2.75</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>$2.75</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>$5.54</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Behavior Supports</td>
<td>$33.26</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Environmental and Minor Home Adaptati on</td>
<td>$500 per calendar year</td>
<td></td>
</tr>
<tr>
<td>Financial Management</td>
<td>$12.50 (not to exceed eight (8) units or $100.00 per month)</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Support Broker</td>
<td>$265.00</td>
<td>One (1) month</td>
</tr>
</tbody>
</table>

Section 13. Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with KRS 1563.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference.
(a) "Person Centered Planning: Guiding Principles", March 2005 edition,
(b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based
Services Memorandum*, February 2001 edition;
   (i) "MAP-95 Request for Equipment Form", June 2007 edition;
   (g) "MAP 109, Plan of Care/Prior Authorization for Waiver Ser-
       vices", March 2007 edition;
   (h) "MAP-350, Long Term Care Facilities and Home and
       Community Based Program Certification Form", January 2000
       edition;
   (i) "MAP-351, The Department for Medicaid Services, Medicaid
       Waiver Assessment", March 2007 edition;
   (j) "MAP 2000, Initiation/Termination of Consumer Directed
       Option (CDO)", March 2007, edition;
   (k) "MAP-10, Waiver Services", March 2007 edition;
   (l) The Kentucky Consumer Directed Option Employee Provid-
       er Contract, May 4, 2007 edition;
   (m) Incident Report Form, April 2, 2007 edition; and
   (n) Michelle P. Waiver Medication Error Report, November 19,

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Department for Medicaid
Services, 275 East Main Street, Frankfort, Kentucky 40621, Mon-
day through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 688; Am. 1493;
1804, 1874; eff. 2-6-09.)
STATEMENT OF EMERGENCY
200 KAR 15:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis due to current market dislocation in the municipal bond market, particularly for state qualified housing and student loan issuers and the unknown future impact of pending Federal legislative proposals aimed at combating this dislocation. It is necessary to promulgate this administrative regulation on an emergency basis because of the credit freeze in the municipal market place for qualified housing and student loan bonds and for the efficient use of the federal private activity volume cap resource under existing statute. Current regulations provide that eighty (80) percent of available volume cap must be allocated to state issuers whom operate in the aforementioned markets and are currently unable to utilize additional volume cap. As there is a three (3) year limit on the carry forward of unused volume cap, over allocating the volume cap to the state issuers would result in a strong possibility of loss through attrition. Should local issuers be unable to utilize the additional cap provided under the existing statute and emergency administrative regulation it will revert to the state issuer pool to be allocated as carryforward.

STEVEN L. BESHEAR, Governor
JONATHAN MILLER, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Amendment)

200 KAR 15:010E. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.286


NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.

Section 1. Definitions. (1) "Affected bonds" means "private activity bonds" as defined by 26 U.S.C. sec. 146, excluding any obligations not subject to the state ceiling under the Code. (2) "Allocation" means the amount of volume cap that was approved by the Kentucky Private Activity Bond Allocation Committee for a local issuer or state issuer. (3) "Available volume cap" means the amount of volume cap remaining from the local issuer pool at the close of business on June 30. (4) "Bonds" is defined by KRS 103.200(2). (5) "Committee" means the Kentucky Private Activity Bond Allocation Committee. (6) "Eligible available volume cap applicants" means state issuers and local project applicants who file a notice of intent to issue relating to available volume cap. (7) "Issued" means delivered and paid for. (8) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds. (9) "Local issuer" or "local issuing authority" means a public or authorized governmental body which issues bonds on behalf of a local project. (10) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency. (11) "Local project" means a project, other than a project for creation or financing of residential single family or multifamily affordable housing which are included under the "state projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state agency. (12) "Lottery" means any process of random selection utilized to allocate available volume cap and which is conducted: (a) By staff at a public meeting of the Committees; and (b) In accordance with Section 5 of this administrative regulation. (13) "Staff" means the Office of Financial Management of the Finance and Administration Cabinet. (14) "State ceiling" means the cap imposed by 26 U.S.C. sec. 146 on private activity bonds issued within the Commonwealth of Kentucky. (15) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency. (16) "State project" means a project, including creation or financing of residential single family or multifamily affordable housing projects and student loans, for which bonds are issued by, on behalf, or for the benefit of a state agency. (17) "Year" shall mean calendar year.

Section 2. [Allocation of State Ceiling for Affected Bonds.] On the first business day of January of each year, the state ceiling for affected bonds shall be divided into two (2) separate pools: (1) Eighty (80) percent of the state ceiling shall be allocated to the state-issuer pool until December 16th. On or after December 16th, the remainder of any unallocated portion of the state-issuer pool shall be allocated by the Committee as carryforward. (2) Twenty (20) percent of the state ceiling shall be reserved for the local issuer pool until June 30 or ninety (90) calendar days after the date of allocation. On July 1st, the remainder of any unallocated portion of the state ceiling shall become available volume cap.

Section 3. [Allocations for Local Projects.] Allocations for local projects shall be subject to the following limitations: (1) A local project, including a local project that is related to other local projects by virtue of the common or complimentary utilization of state ceiling, shall not receive an allocation of state ceiling in an amount greater than twenty-five (25) percent of the local-issuer pool; however, local projects applied for by eligible available volume cap applicants shall also qualify for additional available volume cap allocations after July 1 in an amount not greater than twenty-five (25) percent of the local-issuer pool.

Section 4. [Evaluation of Local Projects.] Local projects seeking allocation from the state ceiling shall be ranked based on evaluation of the factors listed, and allocated according to the rankings: (1) Creation of new jobs, as well as preservation of existing jobs, by the project; (2) Average hourly wage and benefits of new employees proposed for the project; (3) Capital investment in Kentucky being made as a result of the project; (4) Unemployment rate in the county of the project; (5) State economic development incentives awarded to the company, if any; and (6) Previous state ceiling allocated to the benefited borrower within the last ten (10) years.

Section 5.[6] Allocation of Available Volume Cap. Allocations from the available volume cap shall be made to eligible volume cap applicants in [an amount not greater than twenty-five (25) percent of] the local issuer pool, as follows: (1) First, a lottery shall be conducted to determine the order of disbursement to local projects which did not receive an allocation from the local issuer pool. (2) Second, to the extent there is remaining available volume cap, a lottery shall be conducted to determine the order of dis-
bursement to local projects which received an allocation from the local issuer pool, whether the allocation was issued or not.

(3) Finally, any remaining available volume cap shall be allocated by the committee to one (1) or more state issuers for use during the year or as carry forward, and

(4) The committee shall choose a reasonable method of random selection for the lottery process.

Section 4[16] Committee Meetings. The committee shall meet as necessary to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 5[27] An issuer shall obtain a confirmation authorizing the issuance of affected bonds by filing with the committee a written notice of intent to issue bond ("Notice of Intent" form). The committee shall issue a confirmation ("Confirmation of Allocation of State Ceiling* form") allocating to the issuer a portion of the state ceiling. Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. Confirmations shall be dated and numbered in the order issued.

Section 6[9] Notice of Issuance, Local Projects. Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of allocation by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of Issuance* form"). The notice of issuance may be sent by any method, but the committee shall receive it by the close of business on the 90th day after the confirmation. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 7[9] Notice of Issuance, State Projects. Confirmation effective until December 15. The issuer shall deliver to the committee a notice of issuance. The notice of issuance may be sent by any means but the committee shall receive it by the close of business on or before December 15. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 8[14] Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85) Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts less than the confirmation; if the face amount of the issued bonds is not less than eighty-five (85) percent of the original confirmation, the issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent requirement and the unused part of the allocation shall revert to the local issuer pool, or if this reversion occurs after June 30 of any year, the amount shall become available volume cap.

Section 9[14] Carry Forward Allocations. (1) In any year, the committee shall allocate any remaining state ceiling as carry forward allocations if the aggregate amount of affected bonds issued during the year is less than the state ceiling on December 15th. An issuer shall, in order to receive a carry forward allocation, file with the committee by December 15th:

(a) A notice of intent; and

(b) A carry forward election of unused private activity bond volume cap (U.S. Treasury Department Form 8328).

(2) The carry forward of any unallocated portion of the state ceiling may be for any purposes authorized by 26 U.S.C. sec. 146(f).

(3) The committee shall issue a confirmation of the notice and election to carry forward ("Confirmation of Carry Forward Allocation of State Ceiling* form").

(4) The committee may consider, but shall not be required to allocate, a carry forward notice or election filed after December 15th.

Section 10[12] The committee shall not confirm a notice of intent after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year.

Section 11[13] Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project shall not:

(a) File a notice of intent unless the issuance will be made within the ninety (90) day confirmation period established in Section 8 of this administrative regulation; or

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a local project.

(3) An issuer of a state project shall not:

(a) File a notice of intent unless the issuance will be made by December 15; or

(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a state project.

Section 12[14] Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except in cases of surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 13[15] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Intent" application (March 2006);

(b) "Confirmation of Allocation of State Ceiling* (March 1998);

(c) "Confirmation of Carry-forward Allocation of State Ceiling" (March 1998);

(d) "Notice of Issuance* (March 1998); and

(e) "U.S. Treasury Department Form 8328*.

Section 15[16] Amendment Effective Date. This section becomes effective on the day after publication in the Kentucky State Register.

JONATHAN MILLER, Secretary
APPROVED BY AGENCY: January 22, 2009
FILED WITH LPC: February 2, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on March 23, 2009 at 10 a.m. at the Finance and Administration Cabinet, 702 Capitol Avenue, Capitol Annex Room 306, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 3 business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by March 16, 2009, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DeVon Hankins, Policy Advisor
(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation ensures compliance with federal regulations relative to debt ceiling on "private activity" bonds by establishing a process for allocation of the state ceiling for the issuance of private activity bonds.
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(b) The necessity of this administrative regulation: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the process for that allocation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes criteria for efficient allocation of resources within the parameters established by federal tax law and the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides the process for allocation of the state ceiling for the issuance of private activity bonds to assist the committee in the allocation process. Local affordable housing projects will be allocated cap through the state affordable housing finance agency.

(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 emergency regulation temporarily suspends requirements that the Kentucky Private Activity Bond Allocation Committee allocate 80% of available volume cap to the state issuer pool allowing reversion to the statutory minimum requirement of only 60%.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary due to the current municipal market dislocation in the student loan andQualified housing bond markets. State issuers have sufficient private activity volume capacity resources to meet projected demand within existing statutory constraints should the market conditions return to normal. This regulation will decrease the amount of cap mandatorily assigned to the state issuer pool and thereby make additional resources available to local issuers, should there be demand. This will also lower the probability that a portion of the volume cap would be lost to attrition.

(c) How the amendment conforms to the content of the authorizing statutes: The applicable statute contains minimum allocation percentages that will apply rather than the amounts promulgated through the previous regulations.

(d) How the amendment will assist in the effective administration of the statutes: Pursuant to KRS 103.286(2) this change will assist in the efficient issuance of private activity bonds by lowering the probability that portions of available volume cap are lost through attrition.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At present the Commonwealth has two (2) state issuers, The Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation. Any business or organization with a qualified solid waste manufacturing project to be based in the Commonwealth may qualify for local issuer status.

(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: Proposed changes to the regulation will decrease the amount of private activity volume cap authority available to the state issuers while increasing the amount to local issuers. If the additional volume cap is not utilized by local issuers the remaining amount of volume cap would then be returned to the state issuer pool and allocated as carryforward.

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

(a) Initially: No cost to implement.
(b) On a continuing basis: No cost on continuing basis.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased directly or indirectly.

(g) TIERING: Is tiering applied? Tiering is not applied as this regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Housing Corporation, Kentucky Higher Education Student Loan Corporation, and county and city governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The applicable federal statute is the Tax Reform Act of 1986, 26 U.S.C. 146. KRS 103.200, 103.2101, and 103.286.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the current fiscal year and the first year following implementation of the regulation:

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the current fiscal year and the first year following implementation? Unknown

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

(c) How much will it cost to administer this program for the current fiscal year and the first year following implementation?

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

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

Revenues (+/-): Positive Impact. The allocation of additional Private Activity bonds to local authorities would result in additional economic activity in the jurisdiction that is acting as a conduit for the bonds and the state and local government should benefit to an unknown amount.

Expenditures (+/-): No additional expenditures will be incurred.

Another Explanation:

STATEMENT OF EMERGENCY
302 KAR 16:111E

Pursuant to KRS 13A.190, the Governor of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to immediately make effective additional safety regulations for the amusement industry. The reason an ordinary administrative regulation is not sufficient. An ordinary administrative regulation is not sufficient to the ordinary regulation promulgation process timeframe length and the current need for immediate safety regulation and the ability to issue violations. The KDA lacks authority to immediately issue violations without this emergency regulation. This emergency administrative regulation shall be replaced by an administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on this same date. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
RICHIE FARRELL, Commissioner

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Emergency Administrative Regulation)

302 KAR 16:111E. Violations, revocations, and suspensions of business identification number.

RELATES TO: KRS 247.233

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STATUTORY AUTHORITY: KRS 247.233
EFFECTIVE: February 13, 2009
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233

requires the department to establish a comprehensive list of violations and civil penalties not to exceed ten thousand dollars. This administrative regulation establishes a comprehensive violation and fee schedule and the procedure for suspension or revocation of a business identification number.

Section 1. (1) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $1,000 and not more than $10,000:
(a) Operating without a current business identification number;
(b) Operating without current insurance in the required coverage amount;
(c) Operating a ride or attraction while it is under a stop operation order;
(d) Operator not present during operation of ride or attraction;
(e) The use of blocking in foot switch breaker;
(f) The use of improper material for electrical fuse;
(g) Moving equipment after a reportable incident or tampering with evidence;
(h) Ride or attraction operating too close to high voltage;
(i) Ride or attraction positioned underneath utility lines;
(j) Operator impaired;
(k) Generator grounded incorrectly;
(l) Failure to maintain the ride or attraction in good mechanical condition;
(m) Failure to repair ride or attraction according to manufacturer specifications or recommendations;
(n) Failure to properly shield power units;
(o) Failure to use appropriate replacement parts;

(2) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $5,000:
(a) Failure to follow safety guidelines (manufacturer specifications);
(b) Failure to notify the department of an Incident requiring a report within twelve (12) hours;
(c) Failure to submit a required incident report;
(d) Admitting an intoxicated patron on an amusement ride or attraction;
(e) Admitting a patron with inappropriate footwear; and
(f) Failure to completely fill out incident report form.

(3) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $5,000:
(a) Failure to have operational manuals on site;
(b) Failure to have maintenance manuals on site;
(c) Failure to have maintenance records on site;
(d) Fueling ride or attraction in undesignated area;
(e) Exceeding manufacturer's speed of ride or attraction;
(f) Failure to properly secure the ride or attraction;
(g) Failure to have electrical disconnect within six (6) feet of operator;
(h) Operation of a ride or attraction by a operator under eighteen (18) years of age;
(i) Failure to use correct START/STOP switch;
(j) Operating ride or attraction in inclement weather;
(k) Failure to comply with proper operating procedures noted during inspection;
(l) Failure to properly anchor inflatable device;
(m) Failure to perform or document pre-operation inspections;
(n) Operating without an itinerary;
(o) Operating without the required number of operators as required by manufacturer;

(4) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $500:
(a) Failure to have Ground Fault Circuit Interrupter (GFCI) protection where required;
(b) Failure to properly place fencing barrier;
(c) Failure to have fire extinguishers in correct locations;
(d) Failure to have first aid kit on location;
(e) Failure to have inspection sticker in appropriate location; and

(5) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $200: Failure to have ride or attraction signage or use of incorrect signage.

Section 2. (1) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 1 of this administrative regulation, not to exceed $10,000.

(2) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 1 of this administrative regulation, not to exceed $10,000.

(3) Nothing in this section shall prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 3. Business Identification Number Suspension or Revocation. (1) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a business identification number to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend, revoke, or modify the business identification number once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a business identification number and place stop operation orders on all rides or attractions belonging to the owner for not longer than seven (7) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any business identification number issued under KRS 247.234 if it finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:
(a) Made a false or fraudulent statement to inspectors;
(b) Knowingly violated any provision of KRS 247.232 through 236 or any administrative regulations promulgated thereunder; or
(c) Failed to pay a administrative penalty or fee assessed by this chapter.

(4) Any owner whose business identification number is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the business identification number as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

REGULATORY IMPACT ANALYSISIS AND TIERING STATEMENT

Contact Person: Clint Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a comprehensive violation and fee schedule and the procedure for suspension or revocation of a business identification number.
(b) The necessity of this administrative regulation: The penalties for violation of amusement ride and attraction statutes and regulations were eliminated when KRS 247.990 was abolished. This administrative regulation details violations and establishes civil penalties for the violations. This regulation also details the procedure for suspension and revocation of a license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.233 requires the department to establish a comprehensive list of violations. This administrative regulation establishes a comprehensive violation and fee schedule...
and the procedure for suspension or revocation of a business identification number.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation details violations and establishes civil penalties for these violations. This regulation also details the procedure of suspension and revocation of a license. This regulation will make inspections more effective.

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

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

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

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

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

(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation:

The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. This regulation creates the violation matrix. Businesses in violation of this administrative regulation shall be given a notice of violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses not in violation of this section.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any new fees directly or indirectly. It does create administrative penalties.

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

STATEMENT OF EMERGENCY
815 KAR 35-015

This emergency administrative regulation establishes the process for certification of electrical inspectors during emergency or disaster conditions within the Commonwealth. The attached is filed as an emergency administrative regulation in response to an immediate need for electrical inspections to restore electricity to residences that have been without power following a devastating winter storm. The present emergency administrative regulation is to go into effect immediately upon signing, this, the 9th day of February 2009. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
RICHARD MOLONEY, Commissioner

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Building Code Enforcement
(Emergency Amendment)

815 KAR 35:015E. Certification of electrical Inspectors.

RELATES TO: KRS 227.450, 227.489
STATUTORY AUTHORITY: KRS 227.489
EFFECTIVE: February 9, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the Commissioner[Executive-Director] of the Department[Office] of Housing, Buildings and Construction to certify electrical inspectors based on standards of the National Electrical Code, effectively June 16, 2008, reorganized the Office of Housing, Buildings, and Construction, and established the Commissioner, rather than executive director, as the head of the Department. This administrative regulation establishes the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" means the Department[Office] of Housing, Buildings, and Construction.

(3) "Certified electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation; and

(b) Received a certificate of compliance.

(4) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.

(5) "Electrical" is defined by KRS 227.450(3).

(6) "Electrical industry" means the industry engaged in the generation, transmission and distribution of electricity and the de-
sign, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(7) "Employee" means a person who is employed on a full-time, part-time, or contractual basis.

(8) "Executive director" means the Commissioner/Executive Director of the Department/Office of Housing, Buildings, and Construction.

(9) "Department/Office" means the Department/Office of Housing, Buildings, and Construction.

(10) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

(11) "Temporary certification" means a certificate issued by the Department/Office under the provisions of Section 4 of the administrative regulation which is valid for a limited period of time.

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant for certification as an electrical inspector.

Section 3. Categories of Certified Electrical Inspectors. A certified electrical inspector shall be classified as an electrical inspector one (1) and two (2) family or an electrical inspector general.

(a) An electrical inspector one (1) and two (2) family shall:

(b) Be a person who has passed the NCPCCI 2A examination; and

(c) Be qualified to perform an electrical inspection and approve an electrical installation related to:

1. One (1) or two (2) family dwelling; or
2. Manufactured or mobile home.

(2) An electrical inspector general shall:

(a) Be a person who has passed the NCPCCI 2A examination; and

(b) Be qualified to inspect and approve all types of residential, commercial, industrial, or other property which requires electrical inspection.

Section 4. Applications Requirements for Temporary Certification. (1) Before an applicant may sit for the examination for temporary certification as an electrical inspector, the applicant shall:

(a) Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:

a. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or

b. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general; or

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and
2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspectors, which shall be:

1. Notarized; and
2. Received by the Department/Office at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A written statement of need for certification from the local official responsible for the electrical or building inspection program; and
2. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Department/Office of Housing, Buildings, and Construction with recommendations from the Electrical Advisory Committee shall:

(a) Review the documentation; and
(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) An applicant shall receive credit earned for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(4) The Electrical Advisory Committee shall review an applicant for temporary certification to determine his eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be renewed.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the Department/Office of Housing, Buildings and Construction, the applicant shall pass the office's written examination for the class of temporary certification.

(2) An examination shall be:

(a) Administered within thirty (30) days after acceptance by the Department/Office of Housing, Buildings and Construction at the office office in Frankfort, Kentucky, unless another location is specifically designated; and

(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.

(3) A grade of seventy-five (75) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of fifty (50) dollars.

(4) An applicant shall not retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector. (1) General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:

(a) Have at least five (5) years of experience immediately preceding the application in the Installation and design of all types of residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code;

(b) Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspectors, which shall be:

1. Notarized; and
2. Received by the Department/Office at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer; and
2. Proof of successful completion of the NCPCCI examination for:

a. Electrical inspector general, or
b. Electrical inspector one (1) and two (2) family.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Department/Office of Housing, Buildings, and Construction with recommendations from the Electrical Advisory Committee shall:

(a) Review the documentation; and
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(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) Following the review and approval of an applicant's qualifications and examination results by the electrical advisory committee, the department [officer] shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 of this administrative regulation.

(4) A fully-certified Inspector shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:

(a) Be issued to an individual; and

(b) Not be issued to a corporation, partnership, company, or other entity.

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A.

(3) Each electrical inspector certification, except a temporary certificate, shall expire on the last day of the inspector’s birth month each year. The department [office] shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certificate shall be renewed subject to the provisions of this administrative regulation.

(4) A renewal fee of fifty (50) dollars shall be paid by each certified electrical inspector before the last day of the inspector's birth month in each succeeding year to maintain certification.

(5) Delinquent renewal fee. A certified electrical inspector who fails to submit the application for renewal on or before the last day of his or her birth month shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed 180 days after the last day of the inspector's birth month, the certification shall be canceled and shall not be renewed.

(6) Reinstatement. A certificate that has been revoked or canceled may be reinstated upon petition to the executive director for good reason.

(7) An applicant for reinstatement shall pay a reinstatement fee of $100; and shall:

(a) Pay the delinquent renewal fees; and

(b) Submit proof of continuing education for each year the certificate was revoked or canceled; or

(b) Pass the NECPCI examination within the current year.

Section 8. Temporary Emergency Certifications. (1) Whenever an emergency exists in the Commonwealth due to a disaster or an act of God, and the number of persons in the Commonwealth holding certifications as electrical inspectors is insufficient to cope with the emergency, licensed/certified inspectors from out-of-state may work in the Commonwealth for a period of forty-five (45) days by providing the following information:

(a) Proof of electrical inspection certification/license; and

(b) Proof of $5,000 dollar bond as required by KRS 227.487(4).

(2) This information must be provided to the local authority having jurisdiction or the utility company before electrical services are re-connected.

Section 9. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the department [office] of Housing, Buildings, and Construction with advice from the Electrical Advisory Committee.

(2) Each electrical inspection shall be made in compliance with the edition of the National Electrical Code, which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.

(3) In addition to the National Electrical Code, the electrical inspector shall be familiar with the applicable building codes or fire safety codes governing buildings in the area in which the inspector performs an inspection to determine the occupancy load of a facility.

(4) The electrical inspector shall make an inspection upon request of the electrical contractor.

(5) (a) Temporary construction service approvals shall receive a green sticker and a certificate of compliance.

(b) For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of compliance.

(c) Except for manufactured homes, the electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(d) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(e) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(f) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment;

a. With his signature and certification number, name of the project and location; and

b. Stating that the system has been inspected for compliance with the National Electrical Code; and

2. Provide the owner or the owner's agent with a certificate of compliance. For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of compliance.

(g) A red, yellow or green sticker or a certificate of compliance to be used by the electrical inspector shall be issued or approved by the office.

(h) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection and make them available to the office upon request. The record shall contain, as a minimum, the following information:

(a) Sufficient Information to Identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of a required permit and the agency granting the permit;

(e) The size and complexity of the structure; and

(f) Deficiencies in meeting code requirements and the action required to comply.

(9) Violation of KRS 211.350(4) by a certified electrical inspector shall constitute misconduct.

Section 10. [Reserved].
(a) Cause the matter to be heard and a recommendation rendered by the Electrical Advisory Committee;
(b) Set the matter for public hearing; or
(c) Take other appropriate action to resolve or correct the matter.

Section 11,[14] Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the executive director after a KRS Chapter 13B administrative hearing, to have:
(1) Engaged in an activity which constitutes a conflict of interest, including:
   (a) Work as an electrical contractor or electrician;
   (b) Involvement in an activity in the electrical industry; or
   (c) Having a pecuniary or associational interest;
(2) Engaged in fraud, deceit or misrepresentation in obtaining certification;
(3) Been guilty of negligence, incompetence or misconduct as established by this administrative regulation in the field of electrical inspection;
(4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to his inspection if he has not personally inspected the installation and found it to be satisfactory in accordance with the laws;
(5) Operated as an electrical inspector in a locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations;
(6) Knowingly overturned the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or
(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 12,[14] Electrical Inspections by State Employed Certified Electrical Inspectors. (1) State-owned property including each building being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.
(2) A state employed certified electrical inspector shall inspect, for a fee, if a certified electrical inspector has not been made available by the local government.
(3) A state employed certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review under the Kentucky Building Code.
(4) A state employed certified electrical inspector may inspect a state leased facility, upon request.

Section 13,[14] Interpretations. If a provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the order shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction.

Section 14,[14] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form SFM-EL-1, "Application for Electrical Inspectors, May, 2001", Office for Housing, Buildings and Construction;
(b) Form SFM-EL-1A, "Renewal Application for Electrical Inspector Certification, May, 2001", Office for Housing, Buildings and Construction;
(c) Form PHPS-001, "Notice of Release for Temporary Electrical Service", (May 1998 Edition), Department for Public Health; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. VANCE, Secretary
RICHARD MOLONEY, Commissioner

APPROVED BY AGENCY: February 6, 2009
FILED WITH LRC: February 9, 2009 at 10 a.m.
CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the process for certification of electrical inspectors during emergency or disaster conditions within the Commonwealth.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt a procedure by which out-of-state licensed/certified electrical inspectors can assist in expediting the return of electrical services following a disaster or act of God.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require electrical inspectors to be certified in the Commonwealth. For a property to have power activated by the utility company, it must first be inspected by a certified electrical inspector. This regulation allows for the continuation of electrical inspectors under normal circumstances and provides for out-of-state inspectors to assist following times of disaster in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides for emergency provision which will ensure that the citizens of the Commonwealth can regain electrical services as quickly as possible following an emergency or disaster.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will expand the existing administrative regulation and provides emergency assistance with regards to the reconnection of electrical services following disasters and acts of God.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expedite the return of electricity to properties throughout the Commonwealth following natural disasters and emergencies.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires that all electrical inspectors who work in the state be certified. This amendment expands that requirement, giving reciprocity to reporting out-of-state electrical inspectors in emergency and disaster relief situations.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a mechanism for better serving the citizens of the Commonwealth following a disaster or emergency situation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any property that is subject to an electrical inspection prior to electrical services being restored following a natural disaster or emergency situation. Exact numbers are not available.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Out-of-state licensed/certified electrical inspectors who wish to assist during disaster relief are to report to either the local utility company awaiting inspection prior to returning...
electrical power to a structure or the local authority having jurisdiction. Out-of-state electrical inspectors are to provide proof of licensure/certification and proof of bond.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to out-of-state inspectors is work which otherwise would not be allowed under current Kentucky law. The benefit to citizens of the Commonwealth is that electrical power will be restored to residences and structures quicker as inspections can be completed in an expedited manner.

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

(a) Initially: None

(b) On a continuing basis: None

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change as if it is an amendment. There is no anticipated need for fees or funding to implement this amendment of administrative regulation.

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

TIERING: Is tiering applied? N/A. Tiering was not used. All out-of-state inspectors coming in to assist following an emergency will be affected in the same manner. Differences as to size of business, location, et cetera, do not come into play in this context.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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 minimal impact would be to the local utilities and/or local authority having jurisdiction in that such will be checking to be certain that out-of-state electrical inspectors meet the requirements set forth in the 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? N/A

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

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

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

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

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

Other Explanation: Local utilities and/or local authority having jurisdiction in that such will be checking to be certain that out-of-state electrical inspectors meet the requirements set forth in the regulation. For this reason, there is anticipated to be minimal or no fiscal impact from this regulation.

STATEMENT OF EMERGENCY
922 KAR 1:360E

The emergency administrative regulation, 922 KAR 1:360E, private child care placement, levels of care, and payment, is necessary to meet an imminent threat to public health, safety, and welfare of the children and providers. The rate modification will allow the cabinet to continue purchasing services from private child care providers while ensuring programmatic costs are within the constraints of available state revenues as projected at the end of calendar year 2008. The cabinet's ability to continue purchasing services will preserve the health, safety, and welfare of the children in the cabinet's custody and their families. Effective February 1, 2009, private child care provider reimbursement rates for the care of children in State custody will be reduced by three (3) percent for children in Level V residential treatment programs and seven (7) percent for all other levels of care for children in residential treatment programs. All reimbursement rates for children in child-placing programs will be reduced by seven (7) percent. Emergency shelter reimbursement rates will not be affected. An ordinary administrative regulation would not allow the agency sufficient time to implement changes to the private child care provider reimbursement rates, work within the constraints of the state's available revenues as projected for this fiscal year, avoid jeopardizing other child welfare programs offered through the cabinet, and preserve the health, safety, and welfare of children in the cabinet's custody. 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 Protection and Permanency
(Emergency Amendment)

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

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.690, 199.801, 600.020(23), 605.090(1)(d), (d), 610.110, 2008 Ky Acts ch. 127 Part 1, H.10(5) 42 U.S.C. 672,

STATUTORY AUTHORITY: KRS 194A.050(1), 194.641(4), 605.090(1)(d), 605.150(1)

EFFECTIVE: January 30, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

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(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(23).

(6) "Gatekeeper" means the department or agent responsible for:
   (a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
   (b) Other administrative duties in the areas of:
       1. Assessment;
       2. Placement;
       3. Performance measurement; and
       4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:
   (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
   (b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following:
   (a) DPP-886, Private Child Care Client Intragency Referral Form;
   (b) DPP-886A, Application for Referral and Needs Assessment; and
   (c) If a child has an IQ of seventy (70) or above:
       1. Child Behavior Checklist* For Ages 1 1/2-5 (Achenbach); or
       2. Child Behavior Checklist* For Ages 6-18 (Achenbach).

(11) "Model program cost analysis" is defined by KRS 199.641(1)(c).

(12) "Reassigned level of care" means a level of care that is:
   (a) Determined by the gatekeeper after a child's level of care expires; and
   (b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:
   (a) Identifying the child's current level of functioning; and
   (b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:
   (a) The child enters the level of care system;
   (b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or
   (c) A child's level of care expires and assignment of a new level is necessary.

(2)(a) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:
   (a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate;
   (b) As assigned by the gatekeeper within the previous six (6) months; or
   (c) In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:
(1) Evaluate a child forty-eight (48) months of age or older;
   (a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and
   (b) Who is referred by the department or currently placed in a child-placing facility or child-placing agency;

(2) Within three (3) working days of receipt of the level of care packet;
   (a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and
   (b) Return the completed DPP-886, Private Child Care Client Interagency Referral Form, to the department;

(3) Reassess a child utilization review:
   (a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency;

(b1) Every three (3) months thereafter if the child is in a private child care residential placement; or

(b2) Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency;

(6) Maintain a confidential information system for each child served that shall include:
   (a) Placement history;
   (b) Level of care assignments;
   (c) Length of treatment; and
   (d) Discharge outcomes.

Section 4. Levels of Care. A level of care shall be assigned in accordance with the following standards:
(1) A Level I child requires a routine home environment that:
   (a) Provides maintenance;
   (b) Provides guidance;
   (c) Provides supervision to meet the needs of the child; and
   (d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:
   (a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and
   (b) Requires supervision in a structured supportive setting with:
       1. Counseling available from professional or paraprofessional staff;
       2. Educational support; and
       3. Services designed to improve development of normalized social skills.

(3) A Level III child:
   (a) May engage in an occasional violent act;
   (b) May have superficial or fragile interpersonal relationships;
   (c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;
   (d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and
   (e) Requires a program flexible enough to allow:
       1. Extended trials of independence when the child is capable;
       2. A period of corrective and protective structure during relapse; and
       3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:
   (a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others;
   (b) Requires a structured supportive setting with:
       1. Therapeutic counseling available by professional staff; and
       2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child:
   (a) Has a severe impairment, disability, or need;
   (b) Is consistently unable or unwilling to cooperate in his own
care;
(d) Requires Level IV services and a:
   1. Highly structured program with twenty-four (24) hour supervision; or
   2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.
(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(d).
(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on Form DPP-888, Cost Report and Time Study and Instructions.
(2) The cabinet shall establish an Index factor for payment on behalf of a child for whom a level of care has been determined.
(a) The factor shall be determined as follows:
   1. Based on the amount of treatment provided at each level of care; and
   2. By determining the median of:
      a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and
      b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet.
(3) For children whose level is determined, the median level of care shall be represented by an index factor of one. (1)
   2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.
(4) To the extent that funds are appropriated, the payment rate for each level of care shall be calculated by multiplying the median cost by the Index factor specific to that level of care, in accordance with KRS 129.641(4). The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.
(5) Statewide median cost shall be calculated:
   (a) Using a utilization factor of eighty (80) percent:
      1. For an emergency shelter with a treatment license:
         a. Board,
         b. Care; and
         c. Treatment components; or
      2. For an emergency shelter without a treatment license:
         a. Board; and
         b. Care components; and
   (b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.
(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(e). Measurable performance outcomes shall include:
   1. Child safety while in the care of a private child-caring facility or child-placing agency;
   2. Child safety after reunification with the child's family;
   3. Adequate educational support;
   4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
   5. Increased placement stability during the service period;
   6. Increased achievement of permanency goals; and
   7. Increased stability in permanency placement following planned discharge.
(b) The cabinet's contract with a private child-caring facility shall specify the:
   1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection of this section; and
   2. Target percentages used as performance goals.
(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.
(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.
(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.
(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services shall:
   (a) Be geared toward improved performance outcomes; and
   (b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.
(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:
   (a) Reduced length of stay in out-of-home placement;
   (b) Increased safety from child abuse or neglect;
   (c) Increased number of children moving into and remaining in permanent placement;
   (d) Increased number of children and their families cared for in close proximity to their home communities;
   (e) Increased number of children reunified with their families;
   (f) Increased accountability for success in after care; or
   (g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.
(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.
(3) The daily rate for residential care to a child-caring facility shall be:
   (a) Level I - forty-seven (47) dollars and sixty-one (61) cents, effective February 1, 2009; fifty-one (51) dollars and ninety-one (91) cents;
   (b) Level II - fifty-seven (57) dollars and twenty (21) cents, effective February 1, 2009; sixty-one (61) dollars and fifty-two (52) cents;
   (c) Level III - $102.03, effective February 1, 2009; $104.13; and
   (d) Level IV - $140.46, effective February 1, 2009; $141.03; and
   (e) Level V - $204.32, effective February 1, 2009; $210.64.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:360. The rate for emergency shelter care shall be:
   (a) $115.31 per day for a child-caring facility with a treatment license; or
   (b) $101.41 per day for a child-caring facility without a treatment license.
(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:
   (a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or
(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and
(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.
(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:
1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day.
2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and
3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be thirty-nine (39) dollars and ninety-nine (99) cents, effective February 1, 2009[forty-three (43) dollars].

(2) The daily rates for therapeutic foster care shall be as follows:
(a) Levels I and II. If the child is stepped down from Level III or higher - sixty-seven (67) dollars and eighty-nine (89) cents, effective February 1, 2009[seventy-three (73) dollars].
(b) Level III - seventy-four (74) dollars and twenty (20) cents, effective February 1, 2009[seventy-nine (79) dollars and seventy-eight (78) cents].
(c) Level IV - ninety (90) dollars and thirty-one (31) cents, effective February 1, 2009[seventy-seven (77) dollars and one (1) cent].
(d) Level V - $124.86, effective February 1, 2009[$134.26].

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:
(1) A rate consistent with the assigned level of care for the adolescent parent; and
(2) Inclusive of child care cost, thirty-nine (39) dollars and ninety-nine (99) cents per day, effective February 1, 2009[forty-three (43) dollars per day], for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:
(a) Inform the department of the levels of care the facility or agency has the ability to serve;
(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:
   1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
   2. Clinical services including:
      a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and
      b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and
   3. Support services that:
      a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;
      b. Allow a child to cope with the disability or distress;
      c. Provide access to improving the educational or vocational status of the child; and
      d. Provide essential elements of daily living;
   4. Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:
      a. For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:
         a. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or
         b. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and
      b. A child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level consisting of a completed Reid Scale for Children's Dual Diagnosis (Mental Retardation and Psychopathology) by the first utilization review due date and every twelve (12) months thereafter; and
   3. To the gatekeeper and designated cabinet staff, a copy of the following completed forms:
      a. On a quarterly basis, for a private child care residential placement, CRP-001, Children's Review Program Residential Application for Level of Care Payment; or
      b. On a semiannual basis for a foster care placement, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment;
   (d) Provide outcomes data and information as requested by the gatekeeper; and
   (e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:
      1. The Council on Accreditation; or
      2. The Joint Commission on Accreditation for Healthcare Organizations.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Sec. 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Sec. 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:
   (a) Suspend payments until the necessary information has been submitted to the gatekeeper;
   (b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or
   (c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:
   (a) Level of care remains unchanged, payments shall continue unchanged;
   (b) Level of care is reduced, and the:
      1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or
      2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or
      (c) Level of care is increased; the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Sec. 10(1)(c) of this administrative regulation have been submitted on time, and if:
   (a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or
   (b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in
effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of the form specified in Section 11 of this regulation.

1. DFP-886, Private Child Care Client Inter-agency Referral Form for an initial or reassigned level;
2. CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization form for a utilization review;
3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review; or
4. CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, form for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-004, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or
(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-004, the increased payment shall be effective the day after the request is received by the gatekeeper; or
(b) Lower level is assigned by the gatekeeper with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment;
(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:
1. A cover letter requesting a reassignment;
2. An assessment of the child;
3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and
(a) Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach), or
(b) Child Behavior Checklist for Ages six (6) - eighteen (18).

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child has an IQ of seventy (70) or above:

(a) A Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach), or
(b) Child Behavior Checklist for Ages six (6) - eighteen (18).

The reassigned level of care rate shall be effective on the date of admission to the new placement.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and
(b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:350.

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

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", edition 7/00;
(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", edition 6/01;
(c) "CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04;
(d) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", edition 11/04;
(e) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07;
(f) "CRP-004, Children's Review Program Notice of Level of Care Redetermination", edition 11/04;
(g) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", edition 11/04;
(h) "CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment", edition 7/07;
(i) "DPP-114, Level of Care Schedule", edition 6/08;
(j) "DPP-886, Private Child Care Client Inter-agency Referral Form", edition 10/04;
(k) "DPP-886A, Application for Referral and Needs Assessment", edition 07/07;
(l) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Placing and Child-Placing Programs and Facilities", edition 10/04; and
(m) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990.

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

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 30, 2009
FILED WITH LRC: January 30, 2009 at 3 p.m.
CONTACT PERSON: Dawn M. Bellas, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deammer, Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the five levels of care based upon the needs of a child for whom the cabinet has legal responsibility, a payment rate for each level, responsibilities of the gatekeeper, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program cost analysis.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and proce-
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Dues for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities/requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 199.641(4), 605.030(1)(d), and 605.150(1) by establishing the rate setting methodology, methodology for placement of a child committed to the cabinet with a private child care provider, levels of care, reimbursement rates, and related provider and gatekeeper responsibilities/requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its incorporation of the methodology for placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) Why the amendment will change this existing administrative regulation: Effective February 1, 2009, the Cabinet will reduce the per diem reimbursement rates for private child care providers who care for children in State custody. The per diem reimbursement rate for Level V children in residential treatment programs will be reduced by 3%; the per diem reimbursement rates for all other levels of care in residential treatment programs will be reduced by 7%. Per diem reimbursement rates for child-placing programs will be reduced by 7%. Private child care rates for emergency shelter care will not change.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary because of the State's revenue shortfall. Projected state revenues are insufficient to meet the state expenditures during this biennium. The Cabinet was hopeful that reductions made at the beginning of the state fiscal year would be sufficient to address the State's precarious financial plight; however, further reductions are necessary to address the burgeoning shortfall.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes, specifically KRS 199.641(4), through its modification of private child care provider reimbursement rates congruent with available revenues identified for the program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its alignment of private child care provider reimbursement rates with available revenues identified for the program.

(3) List the types, sizes, and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 55 private child care providers who hold an agreement with the Cabinet for various types of placements. As of January 18, 2009, there are 3,299 children whose private child care providers received reimbursement for the children's care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this amendment, private child care providers may find it necessary to reduce the amount of treatment services offered or scale back agency capacity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Impacted entities will not realize any direct benefits as a result of this amendment. However, it allows the Department to continue purchasing services from these entities within the constraint of the available state revenues as projected at the end of 2008.

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

(a) Initially: There is no additional cost estimated to the administrative body.

(b) On a continuing basis: There is no additional cost estimated to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E, Medicaid Rehabilitation (restricted), and state funds are the source of funding for this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 199.641(4), 605.030(1), 605.150(1)

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not involve any increased costs, but will reduce the projected operating costs of the program by $2,599,100 for the current state fiscal year.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will reduce the projected costs of the program by $7,905,500 for State Fiscal Year 2010.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, OMB Circular A-122

2. State compliance standards. KRS 199.641(4), 605.030(1), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, OMB Circular A-122

4. Will the administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,
than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, February 9, 2009)


RELATES TO: KRS 154A.130(4), 164.7671, 164.7674, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889
STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund to administer the funds appropriated to the trust fund for the program. KRS 164.7877(4) requires the Authority to determine the eligibility of the KEESES scholarship program. KRS 164.7879(1) requires the Authority to establish the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(4) requires the Authority to determine the eligibility of a student for a scholarship, and KRS 164.7881(6) requires the Authority to determine the eligibility of a student for an SAT score.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalent under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:
   (a) Located in a state other than Kentucky or in another country;
   (b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:
   (a) Administered to a student for entrance to a Kentucky postsecondary education institution;
   (b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" is defined by KRS 158.007(1) means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KBE.

(5) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where a student is currently enrolled.

(6) "Department of Defense school" means a school operated by the U.S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(7) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a postsecondary education institution that a student is attending.

(8) "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(9) "GED" means a general educational development diploma awarded to a student.

10) "International baccalaureate course" is defined by KRS 158.007(10) means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in KAR 9:340, Section 29(9)(b).

11) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

12) "SAT" means the test:
   (a) Administered to a student for entrance to a Kentucky postsecondary education institution; and
   (b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2) (a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

   1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F":

   2. Adding the total number of points accumulated for an academic year;

   3. Dividing the total number of points accumulated in subparagrapg 2 of this paragraph by the total number of units for the academic year.

   (b) For an eligible high school student taking an advance placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and shall be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(c).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1) (a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)(a) and subsection (b) of this section.

   (b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of their student's eligibility.

(2) (a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1) of this section, shall be responsible for:

   1. Requesting and curriculum information from the local school board;

   2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

   (b) The Authority, upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, shall:

   1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

   2. Verify that the out-of-state high school or Department of
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Defense school is an accredited high school; and
3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEECS Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:
(a) Has earned a base scholarship award in high school;
(b) Has completed the KEECS curriculum as set forth in subsection (2) of this section;
(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and
(d) Is enrolled in a participating institution in an eligible program.
(2) Except as provided in subsection (4) of this section, the KEECS curriculum shall consist of the courses and electives required by this subsection.
(a) For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.
(b) The following subject areas and standards shall be applicable for electives. An elective is:
1. Social studies, science, mathematics, English/language arts, or arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.
2. Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.
3. Foreign languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.
4. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.
(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.787(4)(7)(164.787(4)) shall be eligible to earn a KEECS award for that year upon:
(a) Completion of no fewer than three (3) courses of study; and
(b) Satisfying the provisions of KRS 164.7879.
(4) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:
(a) The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document "Academic Expectations"; or
(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.
(5) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEECS curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.
(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.
(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:
(a) Landscape architecture (04.0601); and
(4) Pursuant to KRS 164.7881(4)(c), an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:
(a) Has not received eight (8) semesters of a KEECS award;
(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs.
1. Pham. D;
2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program, or
3. A program contained on the Equivalent Undergraduate Programs List; and
(c) Has not completed a baccalaureate degree.

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

<table>
<thead>
<tr>
<th>Table C-2</th>
<th>Concordance Between SAT I Recentered V-M Score and ACT Composite Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAT I V-M</td>
<td>ACT Composite</td>
</tr>
<tr>
<td>1600</td>
<td>35-36</td>
</tr>
<tr>
<td>1590</td>
<td>35</td>
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- 2000 -
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<th>930</th>
<th>19</th>
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<td>25</td>
<td>920</td>
<td>19</td>
<td>690</td>
<td>14</td>
</tr>
</tbody>
</table>

This table can be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

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

January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;
(b) The date of the student’s graduation is May 1999 or thereafter;
(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;
(b) The student’s 16th birthday occurs on or after January 1, 1983;
(c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

(a) The parents meet the provisions of KRS 164.7878(3)(6)(a) and (b) KRS 164.7879(3)(6)(a) and (b);
(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) An eligible student who receives a GED diploma within five (5) years of attaining eighteen (18) years of age shall be eligible for a supplemental award if:

(a) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
(b) The student enrolls in a participating institution within five (5) years of receiving the GED diploma.

(5) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(6)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.
(b) A participating institution shall determine a student’s eligibility for a supplemental award under this section and shall notify the Authority of the student’s eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations as defined in KRS 158.007 to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school student— as defined in KRS 164.7874(11)— shall report the status of each student as eligible or ineligible for free and reduced price lunch to the Authority on an annual basis.

(b) In determining a high school student’s free and reduced price lunch eligibility, the high school shall itself utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

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

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

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home of Record Certification, June 2005;" (b) "Curriculum Certification, June 2005;" (c) "Data Submission, June 2005;" and (d) "Equivalent Undergraduate Programs List", June 2005.

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

JERRY SHROAT, Chair
APPROVED BY AGENCY: November 23, 2008
FILED WITH LRC: December 11, 2008 at 2 p.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, February 9, 2009)

16 KAR 6:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4) STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4) NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate, KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the written examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.
Section 2. The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) Beginning September 1, 2009, an applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0563)."

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0011)" with a passing score of 145.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:
   (a) Middle School English and Communications: "Middle School English Language Arts (0049)" - 156;
   (b) Middle School Mathematics: "Middle School Mathematics (0009)" - 145;
   (c) Middle School Science: "Middle School Science (0493)" - 144; or
   (d) Middle School Social Studies: "Middle School Social Studies (0069)" - 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores as identified in this subsection:
   (a) Biology: "Biology: Content Knowledge (0235)" - 146;
   (b) Chemistry: "Chemistry: Content Knowledge (0245)" - 147;
   (c) Earth Science: "Earth and Space Sciences: Content Knowledge (0571)" - 147;
   (d) English: "English Language, Literature and Composition: Content Knowledge (0041)" - 162; and
   (e) Mathematics: "Mathematics: Content Knowledge (0061)" - 125; and
   (f) Physics: "Physics: Content Knowledge (0265)" - 133.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this subsection:
   (a) Art: "Art: Content Knowledge (0133)" - 156; and
   (b) French: "French: Content Knowledge (0173)" - 159;
   (c) German: "German: Content Knowledge (0181)" - 157;
   (d) Health: "Health Education (0550)" - 630;
   (e) Integrated Music:
      1. "Music: Content Knowledge (0113)" - 154; and
   (f) Instrumental Music:
      1. "Music: Content Knowledge (0113)" - 154; and
   (g) Vocal Music:
      1. "Music: Content Knowledge (0113)" - 154; and
   (h) Latin: "Latin (0600)" - 760;
   (i) Physical Education:
      1. "Physical Education: Content Knowledge (0091)" - 147; and
      2. "Physical Education: Movement Forms-Analysis and Design (0092)" - 151;
   (j) School Media Librarian: "Library Media Specialist (0310)" - 640;
   (k) School Psychologist: "School Psychologist (0401)" - 161; or
   (l) Spanish: "Spanish: Content Knowledge (0191)" - 160.

(6) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:
   (a) Communication Disorders:
      1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and
   (b) Speech-Language Pathology (0330) - 600;
   (c) Hearing Impaired:
      1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and
   (d) "Education of Deaf and Hard of Hearing Students (0271)" - 167;
   (e) Hearing Impaired With Sign Proficiency:
      1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157;
   (f) "Education of Deaf and Hard of Hearing Students (0271)" - 167; and
   (g) One (1) of the following tests with a passing score of I.
      1. "Intermediate Level:
         a. "Sign Communication Proficiency Interview (SCP1)";
         b. "Educational Sign Skills Evaluation (ESSE)";
      2. Learning and Behavior Disorders:
         1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and
         2. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157;
   (h) Moderate and Severe Disabilities:
      1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and
      2. "Education of Exceptional Students: Severe to Profound Disabilities (0544)" - 156;
   (i) Visual Impaired:
      1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

(7) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this paragraph subsection:
   (a) Agriculture: "Agriculture (0700)" - 520;
   (b) Business and Marketing Education: "Business Education (0100)" - 540;
   (c) Family and Consumer Sciences: "Family and Consumer Sciences (0172)" - 162; or
   (d) Technology Education: "Technology Education (0505)" - 600.

(8) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this subsection:
   (a) English as a Second Language: "English to Speakers of Other Languages (0360)" - 520;
   (b) Speech/Media Communications: "Speech Communication (0320)" - 560; or
   (c) Theater: "Theatre (0640)" - 560.

(9) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:
   (a) English as a Second Language: "English to Speakers of Other Languages (0360)" - 520;
   (b) Learning and Behavior Disorders, grades eight (8) - twelve (12) "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172; or
Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy test and meet the passing score identified in this section that corresponds to the grade level of certification sought. Each certification in any area, the applicant shall not be required to take an additional pedagogy test if the pedagogy tests and passing scores identified in this section shall be required for each new teacher applicant. If an individual is seeking additional certification in any area, the applicant shall only take one (1) of the pedagogy tests identified in this administrative regulation.

(1) An applicant for Elementary certification (grades preschool - five (5)) shall take "Principles of Learning and Teaching: Grades Kindergarten - six (6) (0522)" - 161.

(2) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades five (5) - nine (9) (0522)" - 161.

(3) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(4) An applicant for certification in all grades with a content area identified in Section 2 of this administrative regulation (i.e., art, music, etc.) shall take either:
   (a) "Principles of Learning and Teaching: Grades Kindergarten - six (6) (0522)" - 161.
   (b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0522)" - 161.
   (c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(5) An applicant applying only for certification for teacher of exceptional children shall be required to take the specific pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take either:
   (a) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0522)" - 161.
   (b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:
   (a) "Principles of Learning and Teaching: Grades Kindergarten - six (6) (0522)" - 161.
   (b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0522)" - 161.
   (c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

[Section 2 - The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) An applicant for elementary certification shall take Elementary Education, Content Knowledge (0236) with a passing score of 148.

(3) An applicant for middle school certification shall take the middle school content test or tests based on the applicant's content area or areas with passing scores as identified in this subsection:
   (a) "Middle School Mathematics (0268) - 148.
   (b) "Middle School Science (0260) - 132.
   (c) "Middle School English Language Arts (0240) - 147.

(4) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take each content test or test based on the applicant's content area or areas with the corresponding passing score as identified in this subsection:

   (a) Communication disorders:
      (i) "Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (ii) "Speech Language Pathology (0340) - 600.
      (iii) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (iv) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.

   (b) Moderate and Severe Disabilities:
      (i) "Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (ii) "Speech Language Pathology (0340) - 600.
      (iii) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (iv) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (v) "Speech Language Pathology (0340) - 600.
      (vi) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (vii) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.

   (c) Moderate and Severe Disabilities:
      (i) "Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (ii) "Speech Language Pathology (0340) - 600.
      (iii) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (iv) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (v) "Speech Language Pathology (0340) - 600.
      (vi) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (vii) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.

   (d) Moderate and Severe Disabilities:
      (i) "Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (ii) "Speech Language Pathology (0340) - 600.
      (iii) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (iv) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (v) "Speech Language Pathology (0340) - 600.
      (vi) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (vii) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.

   (e) Moderate and Severe Disabilities:
      (i) "Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (ii) "Speech Language Pathology (0340) - 600.
      (iii) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (iv) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (v) "Speech Language Pathology (0340) - 600.
      (vi) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (vii) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.

   (f) Moderate and Severe Disabilities:
      (i) "Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (ii) "Speech Language Pathology (0340) - 600.
      (iii) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (iv) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (v) "Speech Language Pathology (0340) - 600.
      (vi) "Learning and Behavior Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.
      (vii) "Communication Disorders: Education of Exceptional Students: Core-Content Knowledge (0353) - 157.

   (g) Vocal music:
      (i) "Music: Content Knowledge (0113) - 164.
      (ii) "Music: Content Knowledge (0113) - 164.
      (iii) "Music: Content Knowledge (0113) - 164.
      (iv) "Music: Content Knowledge (0113) - 164.
      (v) "Music: Content Knowledge (0113) - 164.
      (vi) "Music: Content Knowledge (0113) - 164.
      (vii) "Music: Content Knowledge (0113) - 164.

   (h) Instrumental music:
      (i) "Music: Content Knowledge (0113) - 164.
      (ii) "Music: Content Knowledge (0113) - 164.
      (iii) "Music: Content Knowledge (0113) - 164.
      (iv) "Music: Content Knowledge (0113) - 164.
      (v) "Music: Content Knowledge (0113) - 164.
      (vi) "Music: Content Knowledge (0113) - 164.
      (vii) "Music: Content Knowledge (0113) - 164."
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1. Music: Content Knowledge (0113) -- 164; and
(i) Physical education:
1. Physical Education: Content Knowledge (0021) -- 147; and
2. Physical Education: Movement Forme Analysis and Design (0022) -- 164;
(i) Spanish: Spanish Content Knowledge (0191) -- 160;
(ii) School Media Librarian: Library Media Specialist (0310) -- 640;
(iii) School Psychologist: NTE Specialty Area Examination -- 630.
(7) An applicant for career and technical education certification to teach in grades 6-12 with one (1) or more of the following specializations shall take the content test or tests with the passing scores as identified in this subsection:
(a) Agriculture: Agriculture (0700) -- 563;
(b) Business and Marketing Education: Business Education (0100) -- 500;
(c) Family and Consumer Sciences: (0120) -- 600;
(d) Technology Education: Technology Education (0060) -- 600;
(e) Industrial Education: An applicant for industrial education with one (1) or more trades and industry specializations shall complete the assessments established in 15 KAR 6:020;
(9) An applicant for a restricted base certificate in the following content area or areas shall take the content test or tests with the passing scores identified in this subsection:
(a) English as a Second Language: English to Speakers of Other Languages (0600) -- 620;
(b) Speech, Media Communications: Speech Communication (0220) -- 663;
(c) Theater: Theatre (0640) -- 630.
(9) An applicant for an endorsement in the following content area or areas shall take the content test or tests with the passing scores identified in this subsection:
(a) English as a Second Language: English to Speakers of Other Languages (0600) -- 600;
(b) Learning and Behavior Disorders, grades 6-12: Education of Exceptional Students: Mild to Moderate Disabilities (0642) -- 172.
Section 3: In addition to the content area test or tests established in Section 2 of this administrative regulation, the pedagogy tests and passing scores identified in this section shall be required for each new teacher applicant.
(3) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.
(4) An applicant for certification at the secondary level, grades eight through twelve (12), shall take Principles of Learning and Teaching: Grades 7-12 (0624) -- 164.
(6) An applicant for certification in an all-grades content area (e.g., art, music, etc.) shall take either:
(a) Principles of Learning and Teaching: Grades K-6 (0522) -- 164;
(b) Principles of Learning and Teaching: Grades 5-9 (0523) -- 164;
(c) Principles of Learning and Teaching: Grades 7-12 (0524) -- 164;
(d) Principles of Learning and Teaching: Grades 5-9 (0523) -- 164;
(e) Principles of Learning and Teaching: Grades 7-12 (0524) -- 164;
(f) Principles of Learning and Teaching: Grades K-6 (0522) -- 164;
(g) Principles of Learning and Teaching: Grades 5-9 (0523) -- 164;
(h) Principles of Learning and Teaching: Grades 7-12 (0524) -- 164;
(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the restricted base certificate:
(a) Principles of Learning and Teaching: Grades K-6 (0522) -- 164;
(b) Principles of Learning and Teaching: Grades 5-9 (0523) -- 164;
(c) Principles of Learning and Teaching: Grades 7-12 (0524) -- 164.

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.
(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.
(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:
(a) The Educational Testing Service;
(b) The Education Professional Standards Board for special administration;
(c) The agency established by the Education Professional Standards Board as the authorized test administrator.
(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.
(3) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

LORRAINE WILLIAMS, Chairperson
APPROVED BY AGENCY: November 19, 2008
FILED WITH LRC: December 2, 2008 at 1 p.m.
CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7060.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ADRS, February 9, 2009)

103 KAR 27:130. Printing and related industries.
RELATES TO: KRS 139.010(139.060), 139.099(139.100), 139.110, 139.120, 139.130
STATUTORY AUTHORITY: KRS 131.120, 139.710(Chapter 43A)

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1)

authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administration regulation establishes the sales and use tax requirements for necessary to interpret the sales and use tax law as it relates to printing and related industries.

Section 1. The tax shall apply to retail sales charges for printing, lithography, photolithography, rotogravure, gravure, silk screen printing, imprinting, multithiinking, multigraphing, [mimetographing] photostats, steel die engraving, screen imaging, digital imaging, and similar operations now in existence or later devised for consumers regardless of whether or not the paper and other materials are furnished by the consumer.

Section 2. The tax shall apply to retail sales charges for services in connection with the sale of printed matter, including (such as) die cutting, embossing, folding, and other binding and finishing operations regardless of whether or not the said printed matter is furnished by the customer. Other taxable charges included with the sale of printed material shall include (are) costs of postage, addressing, enclosing, sealing, preparing for mailing, or mailing. The tax shall apply to charges for envelopes.

Section 3. The tax does not apply to additional charges for postage or adding, enclosing, sealing, preparing for mailing, or mailing letters or other printed matters provided such charges are stated separately on the invoice and in the accounting records. Tax applies, however, to charges for envelopes.

Section 4. Charges for typography or type composition are not taxable provided that this theory is not conveyed by the typesetter to the customer. The retention of title by the typesetter or typesetter's books and records reflect the return of the type metal by issuance of credit slips and maintenance of proper records. The furnishing of reproduction or galley proofs for no additional charge does not render taxable the charge for the typography or type composition. Charges for reprints or proofs in quantity are classified as charges for printed matter and are subject to tax.

THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: December 15, 2008 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at AFRS, February 9, 2009)


RELATES TO: KRS 139.517, 139.720, 154.27-010, 154.27-070

STATUTORY AUTHORITY: KRS 131.130(1), 139.571(4)(d)(KRS) 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes. KRS 139.517 establishes the sales tax Incentive for alternative fuel, gasification and renewable energy facilities. This administrative regulation establishes requirements for a sales and use tax refund relating to the construction, retrofit, or upgrade of an alternative fuel, gasification, or renewable energy facility.

Section 1. Definitions. (1) "Activation date" is defined in KRS 154.27-010(1).

(2) "Alternative fuel facility" is defined by KRS 154.27-010(3).

(3) "Approved company" is defined in KRS 154.27-010(5).

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

(5) "Construction period" is defined in KRS 154.27-010(13).

(6) "Eligible project" is defined in KRS 154.27-010(15).

(7) "Facility" is defined in KRS 154.27-010(17).

(8) "Gasification facility" is defined in KRS 154.27-010(19).

(9) "Renewable energy facility" is defined in KRS 154.27-010(24).

(10) "Retrofit" is defined in KRS 154.27-010(25).

(11) "Upgrade" is defined in KRS 154.27-010(30).

Section 2. Refund Application Requirements. (1) The approved company shall file requests for refunds with the Department of Revenue annually within the sixty (60) day deadline provided for in KRS 139.517(4) and according to the activation date requirements of KRS 154.27-010.

(2) Refund requests shall be postmarked, electronically submitted, or delivered by messenger, hand-stamped by the department by the date required to qualify for consideration and shall include the following:

(a) Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund, Form 51A301; and

(b) Information Sharing and Assignment Agreement for Designated Refund Claims, Form 51A290, which is incorporated by reference in 103 KAR 3:020. This agreement shall be completed and signed by the approved company, the subcontractor or contractor (purchaser), and the vendor as applicable;

(c) Expenditure Report for Alternative Fuel, Gasification, and Renewable Energy Facility Refunds, Form 51A302, from each purchaser detailing all tangible personal property used in the construction, retrofitting, or upgrading of an eligible project and the total corresponding Kentucky sales and use tax paid; and

(d) Sample invoices between each purchaser and vendor.

(3) Failure to file the request for a refund within the sixty (60) day deadline shall result in the forfeiture of the refund for that year and the amount forfeited shall not be subject to a refund request for any subsequent years.

Section 3. Record-keeping Requirements. The approved company shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit [part of or all of] the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.517.

Section 4. [Refund Calculation. Refund Calculation shall be based upon the purchase of tangible personal property made within the construction period that is incorporated into the facility according to the sales and use tax incentive amounts approved by the authority.]

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

(a) "Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund", Form 51A301, December 2008; and


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

THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: December 15, 2008 at 11 a.m.
CONTACT PERSON: Richard Dobson, Executive Director,

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GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, February 9, 2009)

201 KAR 2:310. Compounding for a practitioner's office or institutional administration.

RELATES TO KRS 315.191(1)(a)
STATUTORY AUTHORITY: KRS 315.191(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) requires the board to promulgate administrative regulations to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. This administrative regulation addresses compounding for use by a practitioner's office administration or institutional administration.

Section 1. A pharmacist, pharmacist intern, or pharmacy technician may prepare a compounded drug for a practitioner's office administration or institutional administration.

Section 2. A compounded drug that contains a controlled substance shall not be compounded for office or institutional administration.

Section 3. The pharmacist shall receive a written, verbal, facsimile, or electronic request for a compounded drug from a practitioner, indicating the formulation, strength, and quantity ordered.

Section 4. Label Requirements. A label shall be generated for the compounded drug and shall include:

(1) The name of the practitioner;
(2) The designated name and strength of the compounded drug;
(3) The quantity dispensed;
(4) A lot or batch number of the compounded drug;
(5) The beyond use date for the compounded drug;
(6) The date the compounded is dispensed;
(7) The pharmacy's name, address, and telephone number;
(8) Any special storage requirements;
(9) A notation stating "For Office or Institutional Administration Only-Do Not Dispense to Patient;"
(10) Any auxiliary label required for the compounded drug.

Section 5. The compounded drug shall be administered in the practitioner's office or institution and shall not be dispensed to the patient.

Section 6. The prescription for the compounded drug shall be kept pursuant to 201 KAR 2:170.

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,

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure and Certification for Dietitians and Nutritionists
(As Amended at ARRS, February 9, 2009)

201 KAR 33:020. Renewals.

RELATES TO: KRS 310.050
STATUTORY AUTHORITY: KRS 310.041, 310.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050 provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Regular Renewal. (1) A licensed dietitian or certified nutritionist shall annually, before November 1, pay to the board the renewal fee established by 201 KAR 33:010, Section 2, for the renewal of the license or certificate.

(2) If a license or certificate is not renewed before November 1 of each year, it shall expire.

(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33:030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which a licensee or certificate holder may renew his or her license or certificate upon payment of the renewal fee plus the late renewal fee established by 201 KAR 33:010, Section 2.

(2)(a) A licensee or certificate holder may continue to practice during the sixty (60) day grace period;
(b) Upon request of an employer, a licensee or certificate holder practicing in accordance with paragraph (a) of this subsection shall present evidence of a valid pre-existing license or certificate.

(3) A person requesting renewal of a certification during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. Upon revocation, a licensee or certificate holder shall no longer be eligible to practice in the Commonwealth:

(1) No longer be eligible to practice in the Commonwealth and

(2) May be sent notice at the last-known address available to the Board that the license or certificate has been revoked and that he or she shall cease and desist practice.

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, a license or certificate, which has been automatically revoked due to failure to renew, shall be reinstated if the licensee or certificate holder has:

(1) Paid the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and

(2) Documented that he or she has complied with the continuing education requirements established by 201 KAR 33:030.

This is to certify that the Chair of the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 310.

CHERYL BENTLEY
APPROVED BY AGENCY: November 20, 2008
FILED WITH LRC: November 20, 2008 at 3 p.m.
CONTACT PERSON: Barbara Rucker, Administrative and Support Services Section Supervisor, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(As Amended at ARRS, February 8, 2009)

201 KAR 36:070. Education requirements.

RELATES TO: KRS 335.525(1)(c), (d), 335.627(1)(a)
STATUTORY AUTHORITY: KRS 335.516(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. This administrative regulation establishes the educational requirements for licensure.

Section 1. (1) In accordance with KRS 335.525(1)(c), an applicant shall be deemed to have a degree in:
(a) Counseling if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word "counseling";
or
(b) A.
(2) An applicant shall be deemed to have a degree in a related field if the applicant has completed an academic program of study that includes an organized sequence of graduate coursework in a minimum of five (5) of the nine (9) content areas established in KRS 335.525(1)(d).

Section 1. (2) If an applicant professes a degree in a related field, the applicant shall also provide evidence of additional coursework in each area listed in KRS 335.525(1)(d) that is not included in the applicant's degree program. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d).
The (3) Degree— and— graduate— credit— hours— required— under— KRS 335.525(1)(d) shall be from a regionally-accredited institution and shall include all nine (9) content areas established in KRS 335.525(1)(d).

Section 2. (1) Except as provided by subsection (2) of this section, the practicum or internship required by KRS 335.525(1)(e) shall be completed within the organized sequence of study of the graduate degree of the applicant.
(2) If the degree held by the applicant did not include a 400 hour practicum or internship, the applicant shall have completed a graduate level practicum or internship at a regionally-accredited university or college under the direction of a qualified graduate faculty member.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Instructions for Completion of Application for a Licensed Professional Counselor Associate (LPCA)";
(b) "Instructions for Completion of Application for Licensed Professional Counselor (LPC)"; and
(c) "Application for Licensed Professional Counselor and Associate (LPCA)".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensed Professional Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ALLEN EDWARD HALL, Chair
APPROVED BY AGENCY: November 20, 2008
FILED WITH LRC: November 20, 2008

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, February 8, 2009)

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.129(4), 150.177, 150.178, 150.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish hunting seasons, regulate bag and possession limits, and determine the methods and devices used to take wildlife. KRS 150.177 authorizes the department to issue elk permits to landowners who enroll property for public hunting access. KRS 150.390 authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, and procedures for elk damage abatement and any post-season hunt to be held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least three (3) inches long when measured from the main beam which also counts as one (1) point.
(2) "Antlerless elk" means an elk without visible polishes antler protruding above the hairline.
(3) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.
(4) "Elk" means Cervus elaphus nelsoni.
(5) "Elk Hunting Unit" or "EMU" means a designated area within the elk management area.
(6) "Elk Management Unit" or "EMU" means a designated area containing the elk hunting areas that possess specific elk management restrictions.
(7) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for up to five (5) years.
(8) "Out-of-zone" means all counties not included in the restoration area.
(9) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk causing property damage by de-
partment personnel, the property owner, or another designated person. A person authorized to destroy an elk causing damage shall not:
(a) Move the elk until he has attached a disposal permit provided by the department has been attached to the carcass; and
(b) Remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk hunt application period shall be December 1 to April 30.
(2) A person shall apply for the elk quota hunt via the department's Web site. The applicant shall provide the following [information]:
(a) The applicant's name, Social Security number, date of birth, and mailing address or phone number; and
(b) A nonrefundable application fee of ten (10) dollars.
(3) An applicant shall not apply more than once per application period.
(4) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.
(5) There shall be a random electronic drawing.
(6) Two (2) permits, one (1) antlered and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons.
(a) An applicant who has not reached his or her sixteenth birthday by the last day of the application period shall be entered into the special youth draw. An applicant not drawn for the special youth permits shall be automatically entered into the regular drawing.
(b) The application period and fee for the special youth draw shall be the same as the elk quota hunt application period set forth in subsection (1) of this section.
(c) A special youth hunt permit shall be valid for the assigned EHU during seasons specified in Section 6 of this administrative regulation.
(7) Five (5) either-sex permits shall be available for a special youth-only elk quota hunt to be held for three (3) consecutive days on Paul Van Booven WMA, beginning the last Saturday in September.
(a) There shall be a separate random electronic drawing for the youth-only elk quota hunt.
(b) The application period for the 2009 youth-only elk quota hunt shall be April 1, 2009 through April 30, 2009.
(c) Beginning December 1, 2009, the application period for the youth-only elk quota hunt shall be December 1 through April 30.
(d) A youth/youth shall apply via the department's Web site.
The applicant shall provide the following:
1. The applicant's name, Social Security number, date of birth, and mailing address or phone number and
2. A nonrefundable application fee of ten (10) dollars.
3. An applicant shall not apply for the youth-only elk quota hunt more than once per application period.
(e) An applicant [Applies] for the youth-only elk quota hunt may also apply for the regular quota elk hunt, as set forth in Section 3 of this administrative regulation. A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in the regular quota elk hunt lottery held during the same calendar year.
(f) No more than ten (10) percent of all drawn applicants shall be nonresidents.
(g) A quota hunt permit awarded via a department-administered lottery drawing shall not be transferable.

Section 4. Landowner Cooperators. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per each 5,000 acres for each year of the agreement to a landowner cooperator.
(2) A recipient of a landowner cooperators permit shall comply with the seasons, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.
(3) A landowner cooperators permit is transferable, but shall be used only on the land for which the agreement was made.
(a) The permit may be transferred to any person eligible to
(b) The landowner cooperator or person who has received a landowner cooperators permit shall provide the following information to the department before the transferee shall hunt:
1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.
(c) The permit shall not be transferable after being used for the harvest of one (1) elk.
(d) Public access agreements with the department shall be recorded in writing.

Section 5. Hunt License Fee. (1) The state wide bag limit shall be one (1) elk per hunter per license year.
(2) A person who legally receives a landowner cooperators permit or a special cooperators permit issued pursuant to 301 KAR 3:100 may be accompanied by up to two (2) other individuals.
(3) A person shall be designated as a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns or leases land in the elk restoration zone may hunt on his or her land.
(4) An elk hunter or any person accompanying an elk hunter shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest pursuant to 301 KAR 2:172.
(a) Elk hunter shall not:
1. Take elk except during daylight hours;
2. Use dogs, except for leash and tracking dogs to recover wounded elk;
(b) Hunt during the early rifle season.
(c) Use electronic calls or electronic decoys;
(d) Take an elk if the hunter is in a vehicle, boat, or on horseback (from-a-vehicle or on horseback). A disabled hunter who has a hunting method exemption permit issued by the department may use a stationary vehicle as a hunting platform.
(e) An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.
(f) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person's firearm.
(g) An adult accompanying a person under (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.
(h) A hunter may use any firearm, archery equipment, or crossbow legal for hunting deer pursuant to 301 KAR 2:172.
(i) Except as authorized by KRS 237.110, a person shall not carry any of the following items while hunting elk:
(j) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172.
(k) A modern firearm of less than .270 caliber;
(l) A muzzleloading firearm of less than .50 caliber;
(m) A shotgun of less than 20 gauge;
(n) Arrow without a broadhead point;
(o) A handgun with a barrel length of less than six (6) inches, a bore diameter less than 0.227 inches (.227 caliber), and when fired, the bullet shall produce at least 550 fps of energy at 100 yards.
(jl) Except as authorized by KRS 237.110, a person shall not carry a concealed weapon authorized by KRS 237.110, shall not:
(a) Use any of the items listed in Section 5 (10) to take elk and
(b) Use any firearm to take elk during the archery-only season...
as set forth in Section 6 of the administrative regulation.

(13) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(14) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only quota hunts in accordance with the seasons and limits in Section 6 of this administrative regulation.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A hunter may use archery equipment for antlered and antlerless elk beginning the third Saturday in October through the third Monday in January.

(b) A hunter may use a crossbow for antlered or antlerless elk:
(a) For two (2) consecutive days beginning the third Saturday in October; and
(b) From the second Saturday in November through December 31.

(3) A hunter may use archery equipment, a modern firearm, a muzzleloader, or a crossbow:
(a) For antlered elk during one (1) of two (2) seven (7) consecutive weekends as assigned:
1. The first seven (7)-day period shall begin the first Saturday in October.
2. The second seven (7)-day period shall begin the second Saturday in October.
3. The hunter shall be assigned to one (1) week during the regular draw.
(b) For antlerless elk:
1. For ten (10) consecutive days, beginning the second Saturday in November, and
2. For fourteen (14) consecutive days beginning the second Saturday in December:
(a) Beginning the first Saturday in October through the third Monday in January for antlered elk; and
(b) Beginning the second Saturday in October through the third Monday in January for antlerless elk.

(2) A hunter may use a modern firearm, muzzleloader, or crossbow:
(a) For seven (7) consecutive days beginning the first Saturday in October for antlered elk; and
(b) For fourteen (14) consecutive days beginning the second Saturday in December for antlerless elk.

(3) A hunter may use a crossbow for antlered or antlerless elk:
(a) From the second Saturday in October through the end of the third full weekend in October; and
(b) From the second Saturday in November through December 31.

(4) The statewide season bag limit shall be one (1) elk per hunter.

(4) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(b) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only quota hunts.

Section 7. EHU boundaries. EHU's shall be designated as follows:

(1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds south-east following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to US Hwy 23. The boundary then follows the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on US Hwy 23, the boundary proceeds south to the intersection of US Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolf County line. The boundary then follows the county lines of Magoffin/Wolf County, Magoffin/Morgan County, and Johnson/Morgan County northeast to US Hwy 23, completing the boundary.

(3) EHU 3 - Starting at the intersection of US Hwy 23 and State Hwy 80, the boundary proceeds south following US Hwy 23 to the intersection of US Hwy 23 with the Kentucky/Virginia state line. The boundary then follows US Hwy 119 west to the intersection of US Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and US Hwy 23, completing the boundary.

(4) EHU 4 - Starting at the Breathitt/Wolf County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Leu County, and Breathitt/Wolf County northeast to State Hwy 15 at the Breathitt/Wolf County line, completing the boundary.

(5) EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and US Hwy 119. The boundary then follows US Hwy 119 east to the intersection of US Hwy 119 and US Hwy 23. The boundary then follows US Hwy 23 south to the intersection of US Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with US Hwy 421. The boundary then follows US Hwy 421 north to the intersection of US Hwy 421 and State Hwy 66, then north along 66 to the intersection of 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(6) EHU 6 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with US Hwy 421. The boundary then proceeds south on 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCracken/Pulaski County, McCrack/McCreary County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

Section 8. Postseason Quota Hunt for Antlerless Elk on Private Land. (1) A modern firearms hunt for antlerless elk shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Hunters shall be randomly drawn from the pool of applicants who were not drawn for the quota hunt immediately preceding the postseason hunt.

(3) Drawn applicants shall comply with the requirements in Section 5 of this administrative regulation except that applicants may hunt only in the EMU to which they are assigned or on land they own within another EMU.

(4) EMU's shall be designated as follows:
(a) Knott County EMU. Starting at the intersection of State Hwy 7 and 899 south of Dena, the boundary then proceeds south along 899 to the intersection of State Hwy 160 near Brinkley, then south on State Hwy 160 to the intersection of State Hwy 160 and State Hwy 582 near Litcarr, then east on State Hwy 582 to the intersection of State Hwys 582 and 7. The boundary then proceeds north on State Hwy 7 to the intersection with State Hwy 899, then completing the boundary.
(b) Stoney Fork EMU. Starting at the intersection of State Hwy 2056 and US Hwy 421 near Helton, the boundary then proceeds south along US Hwy 421 to the intersection of US Hwy 421 and US Hwy 119 near Harlan, then west along US Hwy 119 to the
intersection of US Hwy 119 and US Hwy 25E. The boundary then
goes north following US Hwy 25E to the intersection with State
Hwy 66, then north on State Hwy 66 to the intersection of State
Hwy 66 and 1850, then east along State Hwy 1850 to the inter-
section of State Hwy 2150 and 1780 at Warbranch. The bound-
ary then proceeds south on State Hwy 1780 to its intersection
with State Hwy 2058 near Spruce Pine, then east on State Hwy
2058 back to US Hwy 421 at Helen, thus completing the bound-
ary.

(5) Public hunting areas shall be closed to elk hunting during
this season.

(6) The provisions of subsections (1) through (5) of this sec-
tion shall no longer be in effect after 12:00 a.m., March 1, 2009.

Section 9. Tagging and Checking Requirements. Immediately
after taking an elk and prior to removing the hide or head from the
carcass, a hunter shall:

(1) Record the species, sex, date, and county of kill on a
hunter’s log;

(2) Check the harvested elk by calling 800-245-4263 and
recording the confirmation number on a hunter’s log; and

(3) If hunting in the elk zone during the elk quota hunts, attach
a department-issued tag to the carcass before moving it.

Section 10. Elk Hunting on Public Land. (1) A drawn applicant
or recipient of a special commission permit may hunt on Wildlife
Management Areas (WMA), state forests, Big South Fork National
River and Recreation Area, the Daniel Boone National Forest, and
the Jefferson National Forest within the restoration zone under the
conditions of the permit received.

(2) Portions of Paintsville Lake WMA lie outside the restora-
tion zone and are subject to the requirements established in Sec-
tion 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during
quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Bocoran WMA.

(a) The archery and crossbow seasons shall be open as set
forth in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk, except that youths
participating in the youth-only elk quota hunt may use any weapon
legal for elk.

(c) The WMA shall be closed to all other hunting during the
youth-only elk quota hunt.

Section 11. Out-of-zone Elk Hunting. (1) The methods of taking
and seasons established in 301 KAR 2:172 shall apply to taking elk
outside of the restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter shall be a
legal deer hunter and shall possess an out-of-zone elk permit.

(b) Deer shall belong to landowners are] exempt from this
permit requirement as per KRS 150.170.

(2) Either sex elk may be taken and shall not count towards
the bag limit.

(3) Elk harvested out-of-zone shall be telechecked in accord-
ance with Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler
that has the skull or skull plate attached to it shall contact the de-
partment’s Law Enforcement Division within twenty-four (24) hours
to obtain a disposal permit. Approved by the Fish and Wildlife

BENJY KINNAM, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: December 12, 2008
FILED WITH LRC: December 12, 2008 at 4 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and
Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s
Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext 4507,
fax (502) 564-9136.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, February 9, 2009)

401 KAR 8:200. Public and semipublic water supplies [-] general
provisions.

RELATES TO: KRS 211.3501-211.392, 222.160-223.220,
224.10-100, 224.10-110, 224.16-050, 40 C.F.R. 141, 369(40
C.F.R. 141.3, 141.31,[141.70, 141.70a],[141.74],[141.75],
142.14, 142.15, 142.20, 142.21, 142.40-142.65, EQ 2008-507,
2008-531)

STATUTORY AUTHORITY: KRS 223.200, 224.10-
100(2)(b)(9), 224.10-110(2), 40 C.F.R. 141.3, 141.31,[141.70,
141.74a],[141.74],[141.75],[142.14],[142.20],[142.21,
142.40-142.65, 42 U.S.C. 300f-300r-26, 300g-300h-300i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-
100(2)(b)(9) and 224.10-110(2) authorize the cabinet to promul-
gate administrative regulations for the regulation and control of the
purification of water for public and semipublic use. EQ 2008-507
and 2008-531, effective June 16, 2008, abolish the Environmental
and Public Protection Cabinet and establish the new Energy and
Environment Cabinet. This administrative regulation establishes
the general provisions for regulating public and semipublic water
supplies.

Section 1. [Applicability.-(4)-Inclusions] A public or semipublic
water system shall be subject to the requirements of 401 KAR
Chapter 8, except those exempted[noted] in 40 C.F.R. 141.3, ef-
tective July 1, 2007 [subsection (2) of this section].

(2) Exclusions. This chapter shall not apply to water systems in
the following two (2) categories:

(a) Water systems that:
1. Are not under the control of a state, federal, or local government;
2. Are not under the control of a private party or entity;
3. Do not use water for public purposes;
4. Do not receive water through a cross-connection;
5. Do not use water for public purposes;
6. Do not use water through a cross-connection;
7. Do not use water for public purposes;
8. Do not use water through a cross-connection;
9. Do not use water for public purposes;
10. Do not use water through a cross-connection;
11. Do not use water for public purposes;
12. Do not use water through a cross-connection;
13. Do not use water for public purposes;
14. Do not use water through a cross-connection;
15. Do not use water for public purposes;
16. Do not use water through a cross-connection.

(b) Water systems which are conveyors which convey passed
passengers in interstate commerce.

Section 2. [Operation, Maintenance, and Safety Requirements.
(1) Public and semipublic water systems. A person shall not oper-
ate or commence operation of a public or semipublic water system
except in compliance with the provisions of 401 KAR Chapter 8
and 40 C.F.R. 141, effective July 1, 2007. A water supply system
constructed prior to November 11, 1999 may be continued in use,
if the operation, maintenance, bacteriological, chemical, physical,
and technological standards comply with 401 KAR Chapter 8, or the
system obtains a variance or exemption[as set forth in 401 KAR
8-069] from those standards in accordance with 40 C.F.R. 141,
effective July 1, 2007 with which they do not comply.

(2) A cross-connection. All cross-connections shall be
prohibited.

(a) The use of automatic devices, such as reduced pressure
zone, back flow preventers, [and] a vacuum break-
ers, may be approved[by the cabinet] to protect public
health, in lieu of[proper] air gap separation.

(b) A combination of air gap separation and an automatic de-
vice[device] shall be required if determined by the cabinet to be
necessary due to the degree of hazard to public health.

(c) Every public water system shall determine if where to
conduct an air gap separation on a cross-connection existing[or]
and shall immediately eliminate [them].

(d) A bypass shall not be created or maintained
without the prior written approval of the cabinet stating the ap-
proved circumstances for establishment of a bypass, its design,
and the exact conditions [which shall exist] for its use.

(e) Auxiliary intake[s] An auxiliary intake shall not be used in
direct connection with a public or semipublic water system except
with prior written approval from the cabinet stating the emergency
condition that necessitates[conditions which necessitate] the in-
take.

- 2010 -
(5) [Water-and-sewer-connection] The plumbing[sewer] system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountain, and floor drains, shall discharge to the sewer system [if] where available.

(a) If a sewer is not [if] no such sewer is available, the connection shall be made to an approved sewage disposal facility approved pursuant to KRS Chapter 211.955 through 211.992 or 224.15-00.

(b) There shall not be [be] connections between the sewer system and a filter backwash, filter-to-waste drain[drain(s)] or cleanwell overflow line[lines], unless an [an] approved air gap is provided between the drain and overflow line[lines these drains and overflow line] and the [approved] sanitary[s] storm sewer(s) or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow line[lines].

(6) [Preoperational maintenance] The owner or operator of a public water system shall [shall] properly operate and maintain the all facilities and systems of treatment, intakes, and distribution to comply [achieve] compliance with the provisions of 401 KAR Chapter 8. [Preoperational maintenance includes effective performance, preventive maintenance [adequate] operator staffing and training, and pursuant to 401 KAR 8:030, establishing [adequate] representative sample points that comply with the requirements of 401 KAR Chapter 8, and adequate process controls for testing, including [applicable] quality assurance procedures.

(7) Reports to the cabinet.

(a) [Monthly reporting requirements] The supplier of water shall provide a [the] complete monthly report to the cabinet, which shall be received at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601 not later than ten (10) days after the end of the month of which the report is filed.

1. A completed report [reports] with the cabinet. The reports shall be provided to the cabinet and shall be received at the Division of Water, Drinking Water Branch, 14 Rally Road, Frankfort, Kentucky 40601, no later than ten (10) days after the end of each month for which the report is filed. Completed reports shall include:

a. Volume of water treated;

b. Type and amount of chemicals added; and

c. Test results appropriate to be reported by the plant; and

d. [Completed reports shall include] The dated original signature, or equivalent, pursuant to KRS Chapter 263, of the owner or authorized agent.

2. [The] supplier of water shall submit the reports required by 40 C.F.R. 141.75(b) [following reports] to the cabinet no [no] later than ten (10) days after the end of each month the public water system serves water to the public.

3. Public water systems shall report to the cabinet in accordance with 40 C.F.R. 141.31 effective July 1, 2007.

1. Turbidity measurements with maximum contaminant levels and monitoring in accordance with 401 KAR 8:150 or 401 KAR 8:160. The supplier of water shall include the following turbidity information in the monthly operating reports:

a. The total number of filtered water-turbidity measurements taken during the month;

b. The number and percentage of filtered water-turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 401 KAR 8:150, Section 2, or 401 KAR 8:160 for the filtration technology being used; and

c. The date and value of any turbidity measurement taken during the month which exceed five (5) NTU or, for a system that serves a population of greater than 10,000, one (1) NTU.

2. Distribution information specified in 401 KAR 8:150, Section 3(0)(b). The supplier of water shall include the following distribution information in the monthly operating report:

a. For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system; and

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system failed to meet the residual requirements specified in 401 KAR 8:150, Section 1(1), and when the cabinet was notified of the occurrence; and

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:150, Sections 1 and 3(2)(c):

(i) Number of instances where the residual disinfectant concentration is measured;

(ii) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or HPC, is measured;

(iii) Number of instances where the residual disinfectant concentration is measured but does not measure at least two-tenths (0.2) milligrams per liter or ppm or the equivalent and no HPC is measured;

(iv) Number of instances where residual disinfectant concentration is less than two-tenths (0.2) milligrams per liter and where HPC is greater than 500/mi; and

(v) Number of instances where residual disinfectant concentration is not measured and HPC is greater than 500/mi;

(a) [For the current and previous month the system] supervisors submit water to the public the value of T in the following formula:

\[ T = \frac{c + d}{a + b} \]

where

- a = the value in subclause (a) of this clause;
- b = the value in subclause (b) of this clause;
- c = the value in subclause (c) of this clause;
- d = the value in subclause (d) of this clause;
- e = the value in subclause (e) of this clause;

and

(vi) [If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by 401 KAR 8:160, Section 3(1)(c) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)(2)(c) through (vi) of this subsection shall not apply.]

A system need not report the data listed in clause a of this subparagraph if all data listed in clauses a through e of this subparagraph remain on file at the system and the cabinet determines that the system has submitted all the information required by clause a through e of this subparagraph for at least twelve (12) months.

3. Each system, upon discovering that a waterborne disease outbreak potentially attributable to the water system has occurred, shall report that occurrence to the cabinet in accordance with paragraph (a) of this subsection. If the turbidity exceeds five (5) or one (1) NTU, the system shall report the turbidity in accordance with paragraph (c) of this subsection. If the residual falls below the requirements specified in 401 KAR 8:150, Section 1(1), in the water entering the distribution system, the system must notify the cabinet as soon as possible in accordance with paragraph (a) of this subsection. The system also shall notify the cabinet by the end of the next business day whether or not the residual was restored to the required by 401 KAR 8:160, Section 1(1), within four (4) hours.

(b) Reports of failure to comply. A public water system shall report to the cabinet within forty-eight (48) hours by phone or in writing, the failure to comply with any provision of 401 KAR Chapter 8, including the failure to comply with reporting requirements.

(c) Emergency reports.

1. [If a public water system experiences a line break or loss of pressure as established by the cabinet] In 401 KAR 8:150, Section 4(2)(a), loss of disinfection, or other event that may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the (Drinking Water Branch of the) Division of Water at (502) 584-3140 or the appropriate district office of the Division of Water.

2. [If a report required by this paragraph is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 584-2350.]

(b) Records to be maintained. Owners or operators of a public water [or community public water] system shall keep the records estab-
listed in 40 C.F.R. 141.33, effective July 1, 2007 or [or near] the premises
or readily accessible to cabinet staff inspecting the system, the
records set forth in the subsection.
(a) Data summaries: Either actual laboratory reports shall be
kept or data shall be transferred to tabular summaries. The follow-
ing information shall be included:
1. The date, place and time of sampling, and the name of the
person who collected the sample;
2. Whether the sample was a routine distribution system sam-
ple, check sample, raw or processed water sample, or other spe-
cial purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analy-
sis;
5. The analytical technique or method used; and
6. The results of the analysis.
(b) Bacteriological analysis records shall be kept at least five
(5) years.
(c) Chemical analysis records shall be kept at least ten (10)
years.
(d) Turbidity analysis records shall be kept at least one (1) year
and individual filter turbidity data shall be kept at least three (3)
years, pursuant to 401-KAR 8.1.6.
(e) Records of violations and the actions taken by the system
to correct violation of primary drinking water regulations shall be
kept at least ten (10) years after the last action taken with respect
to the particular violation involved.
(f) Records of sanitary surveys, copies of written reports, sum-
maries of communications relating to sanitary surveys of the
system, conducted by the system, a state consultant, or a local,
state or federal agency, shall be kept at least ten (10) years after
completion of the sanitary survey involved. They may be then
transferred to the cabinet.
(g) Records concerning a variance or exemption granted to
the system shall be kept at least five (5) years following the expiration
of the variance or exemption.
(9) Boil water and consumer advisories.
(a) Boil water advisories.
1. A public water system or semipublic water system may issue
boil water advisories if the system believes an advisory is war-
ranted.
2. The cabinet may direct that a boil water advisory be issued
upon[when]
   a. The reception of confirmed positive bacteriological results
      [are received], including E. coli or fecal coliform in at least one
      (1) sample; or
   b. Other circumstances[exist] that warrant an advisory for the
      protection of public health.
(3) The cabinet, if[when it determines] circumstances warrant
for the protection of public health, issue a boil water advisory
directly, rather than rely on a public or semipublic water system to
issue the advisory.
(b) Boil water advisories shall remain in effect until the cabinet
approves the lifting of the advisory based on bacteriological results
showing [no] coliform bacteria are not [not] present in the water.
(b) Consumer advisory.
1. The cabinet may issue a consumer advisory if:
   a. Conditions within a public water system or semipublic water
      system indicate a possible adverse health effect from consump-
      tion of the water distributed by the system; or
   b. Other information of interest to the consumer exists.
2. The advisory shall notify affected persons of a required or
   recommended action[that should be taken].
(c) A public or semipublic water system shall:
1. Immediately notify the local health department that serves
   the area affected [when] a boil water advisory or consumer advi-
   sory is issued.
2. The notification may be made by telephone or fax machine
   for an occurrence during normal business hours.
3. For an occurrence after normal business hours, the public or
   semipublic water system shall notify the affected local health de-
   partment in a manner agreed upon by the system and affected
   health department; or
2. Develop a protocol with a local health department that de-
   scribes when and how the system shall notify the affected health
department [if] the system issues a boil water advisory or consumer advisory. The protocol shall address:
   a. For which types of advisories the system shall notify the
      affected health department;
   b. What procedures shall be used to notify[if] and under what
circumstances;
   c. How soon after the occurrence the notification shall be
      made[if] and
d. To whom the notification shall be made, during and after
   business hours [The public or semipublic water system shall com-
   ply with the agreed upon protocol].
(10) How to issue advisory.
(a) Boil water advisories and consumer advisories shall be
issued through newspapers, radio, television, or other media hav-
ing an immediate public impact.
(b) As a health and safety measure, the water system shall
repeat the notification during the period of imminent danger at
intervals that maintain public awareness.
(c) The advisory shall be readily understandable and shall
include instructions for the public, as well as an explanation of the
steps being taken to correct the problem.
2. Boiling instructions shall caution[c]ool[drinking] water to be
   used for consumption[for short-range use] by boiling the
   water for at least three (3) minutes at a rolling boil.
(11) Other notices. Other public notifications shall be issued by
a public water system as required by 401-KAR Chapter 8.
(12) Maps.
(a) A public or semipublic water system shall have on the pre-
   mises, or readily accessible to cabinet staff inspecting the sys-
   tem[conveniently located to the premises], an up-to-date map of
the distribution system. The map shall, at a minimum, show
1. Line size;
2. Cutoff valves;
3. Fire hydrants;
4. Flush hydrants;
5. Tanks;
6. Booster pumps;
7. Chlorination stations;
8. Connection to emergency or alternative sources;
9. Wholesale customer master meters; and
10. Type of piping material in the distribution system and its
   location.
(b). If a public water system[ due to age, improper documen-
tation, lost documentation or other valid reason] is not able to
comply with the requirements of paragraph (a) of this subsection
then the system may petition the cabinet to modify
the requirement to the extent that compliance is not feasible.
(c) 2. The petition for modification shall state specifically what
portion of the requirements of paragraph (a) of this subsection
the requirement is not practical and why.
(a) Each public water system shall develop and keep on the
promises, for operators and employees of the system, an operation
and maintenance manual that includes:
1. A detailed design of the plant;
2. Daily operating procedures;
3. A schedule of testing requirements designating who is re-
   sponsible for the tests; and
4. Safety procedures for operation of the facility, including
   storage and inventory requirements for materials and supplies used
   by the facility.
(b) The operation and maintenance manual shall be updated
as necessary, but not less than annually, and shall be available
for inspection by the cabinet.
(c) Public water systems serving fewer than 100 people or
   thirty (30) service connections may request that the cabinet waive
   the requirements of paragraphs (a) and (b) of this subsection.
   The request shall be in writing and any waiver granted by the
cabinet shall be in writing and be retained by the public
   water system for examination by cabinet personnel.
(13)(14) Flushing recommended.
(a) To protect public health, a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines.

1. Flushing shall start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main.

2. Flushing shall continue at each hydrant until all traces of turbidity and color are gone.

3. Hydrants shall be opened and shut slowly to prevent damage from water hammer.

(b) In addition to the regular scheduled flushing, the following conditions shall indicate a need to flush the entire system:

1. Turbidity within the distribution system greater than five (5) or one (1) nephelometric turbidity units, or NTU, as applicable to the system.

2. An inability to maintain an adequate residual of a disinfection agent in any part of the system; or

3. A heterotrophic plate count, or HPC, in excess of 500.

(c) Other indicators that flushing may be necessary shall be taste and color complaints, color of water, contaminated water samples, or line repairs.

14[146] A person shall not introduce into the water supply system a substance that may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

15[146] Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8-040, except that measurements for turbidity, disinfectant residuals, and other parameters specified by 40 C.F.R. 141.131[401 KAR 8-510], Section 5 may be performed by a certified operator[person approved by the cabinet].

17[149] Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water suppliers to determine whether the suppliers have acted or are acting in compliance with applicable laws or regulations that the cabinet has the authority to enforce.

(a) Entry may include collection of water samples for laboratory analysis[,] and inspection of records, files, papers, processes, controls and facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8.

(b) The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

17[148] Recommended practices for water supply reservoirs to be used for drinking water. The following practices may be employed by water systems that have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing, and other contact sports;

(b) Prohibition of large motor-driven craft or any craft with toilets;

(c) A requirement that an area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns;

(d) Prohibition of effluent from sewage treatment plants being discharged into the lake;

(e) Pondering may be permitted around the lake if plans for the development of a[any] picnic area meet regulatory requirements of the cabinet;

(f) Implementation of a nonpoint source pollution control plan shall be implemented.

18[148] Water treatment chemicals and system components Chemical additives and protective materials, such as paints and linings, may be used by a water system if the requirements established in the Great Lakes-Upper Mississippi River Board of State Public Health & Environmental Managers’ Recommended Standards for Water Works are met and the cabinet determines that the use of such materials is appropriate for the system.

19[20] Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner that shall not violate 401 KAR 10-031[69-634].

20[21] Water loading stations. A public water system that provides water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes-Upper Mississippi River Board of State Public Health & Environmental Managers’ [Recommended Standards for Water Works[1]] [incorporated by reference in Section 4 of this administrative regulation].

Section 3. Records and Reports-Maintained by the Cabinet. The cabinet shall maintain[and report] records and reports as established in[by] 40 C.F.R. 142.14 and 142.15, effective July 1, 2007[adopted without change in Section 4 of this administrative regulation].

Section 4. A public water system may receive a variance or exemption from some provisions of 401 KAR Chapter 8 in accordance with 40 C.F.R. 141.4, 142.20, 142.21, 142.40-142.65, and 142.301-142.313, effective July 1, 2007.

Section 5. A public water system may use noncentralized treatment devices or bottled water in accordance with 40 C.F.R. 141. Sections 141.101, effective July 1, 2007.[Federal Regulations Adopted Without Change] 40 C.F.R. 142.14, 142.15, July 2003. The subject matter of this administrative regulation relating to the records and reports required to be maintained by the cabinet shall be governed by those federal regulations.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 200 Fair Oaks Lane[Drinking Water Branch, 14 Reilly Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained through the division’s Web site at through www.water.ky.gov/dw.

HENRY 'HANK' LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water
(As Amended at ARS, February 9, 2009)

401 KAR 8:150. Disinfection, filtration, and recycling.

RELATES TO: KRS 224.10-100, 224.10-110. 40 C.F.R. 141.70-141.76, EQ 2008-507, 2008-531[142-16]


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(2)(b) and 224.10-110(2) authorize the[Secretary of the Environmental and Public Protection Cabinet] cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EQ 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes requirements for the disinfection, filtration, recycling, and testing of drink-
ing water in a public or semipublic water system using surface water or groundwater not under the direct influence of surface water. This administrative regulation differs from the federal regulation by requiring filtration on [all] water supplies that have surface water sources and disinfection of water supplies whose source is groundwater. [Filtration on all systems with surface-water sources is necessary because those systems would not be able to meet the applicable standards without filtration. Groundwater disinfection is necessary due to the karstic nature of Kentucky's geology and to protect against bacteria that could develop in water systems.]

Section 1. Disinfection. A public and semipublic water system shall provide disinfection, except as provided in this section. A semipublic water system shall comply (meet this requirement—either by complying) with the requirements of this section for public water systems or meet (by-measuring) the requirements of Section 2(2)(A)(I) of this administrative regulation.

(1) A public water system using groundwater or surface water as a source.

(a) A public water system that uses chlorine shall:

1. Use continuous automatic disinfection by chlorination;
2. Provide a minimum residual of two-tenths (0.2) milligrams per liter, or ppm, throughout the distribution system measured as described in subsection (2) of this section;
3. [Provide a contact period of at least thirty (30) minutes between the chlorine and the water to allow adequate time for disinfection.]
4. Check free chlorine residuals daily at representative points throughout the system; and
5. (3) Report the free chlorine residuals monthly pursuant to 401 KAR 6:020, Section 2(7)(2)(e).

(b) Disinfecting agents other than chlorine may be used, such as chloramines and chlorine dioxide, may be acceptable pursuant to conditions in 40 C.F.R. 141.172(c), effective July 1, 2007, or if approved by the cabinet prior to January 1, 2008.

2. If chloramination is used, a minimum combined residual of five-tenths (0.5) milligrams per liter, or ppm, shall be provided throughout the distribution system.

(b) A public water system using water as a source or groundwater under the direct influence of surface water shall provide disinfection treatment as established in 40 C.F.R. 141.72(b), effective July 1, 2007.

(c) Follows:

(a) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3 log) inactivation or removal of Giardia lamblia cysts and at least 99.99 percent (4 log) inactivation or removal of viruses, in accordance with 40 C.F.R. 141.6-Subpart H, June 29, 1998, consensus guidelines of the "Guideline for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources."

(b) The residual disinfectant concentration in the water-entailing the distribution system measured as specified in Section 3(1) of this administrative regulation shall not be less than required by subsection (1) of this section for more than four (4) hours.

(c) The residual disinfectant concentration in the distribution system measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide as specified in Section 3(1) of this administrative regulation shall not be less than two-tenths (0.2) milligrams per liter, or ppm, in more than five (5) percent of the samples each month for the (2) consecutive months that the system serves water to the public.

2. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500,000, measured as heterotrophic plate count, or HPC, as specified in Section 2(2)(d) of this administrative regulation, shall be deemed to have an adequate disinfectant residual for purposes of determining compliance with this requirement.

2. The value, \( \frac{a + b}{c + d + e} \times 100 \)

were:

- \( a \)-number of instances that the residual disinfectant concentration is measured;
- \( b \)-number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or HPC, is measured;
- \( c \)-number of instances that the residual disinfectant concentration is measured but does not measure at least two-tenths (0.2) milligrams per liter, or ppm, or the equivalent, and HPC is not measured;
- \( d \)-number of instances that residual disinfectant concentration is below two-tenths (0.2) milligrams per liter, and where the HPC is greater than 500 ml/c.
- \( e \)-number of instances that the residual disinfectant concentration is not measured, and HPC is greater than 500 ml/c.

(d) If a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Section 3(1) of this administrative regulation, and the system is providing adequate disinfection in the distribution system as required by 40 C.F.R. 141.72(3)(3)(c), June 29, 2004, the requirements of paragraph (c) of this subsection shall not apply.

(e) If a disinfectant residual fails to comply with Section 11(1) of this administrative regulation, the public shall be notified in accordance with 401 KAR 8:020, Section 2(9).

(f) (9) Variances or exemptions shall not be granted for subsection (2) of this section.

(f) In addition to the requirements of this administrative regulation, a public water system that serves fewer than 10,000 people shall comply with the requirements in 401 KAR 8-162.

Section 2. Filtration. (1) A public water system using a surface water source or a groundwater system with wells with variable or high turbidity due to characteristics of the raw water that may cause an adverse health effect, or a groundwater system under the direct influence of surface water shall establish a filtration system. The design for the system shall be submitted to the cabinet in accordance with 401 KAR 8:100 and shall comply with 40 C.F.R. 141.72, effective July 1, 2007.

2. This section:

(a) Slow sand filtration.

1. If a public water system uses slow sand filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month measured as specified in Section 3(1) of this administrative regulation, except that if the cabinet determines there is no significant interference with disinfection at a higher turbidity level, the cabinet may substitute this higher turbidity limit for this system. Conditions constituting significant interference and conditions if higher turbidity limits are substituted shall be established in 40 C.F.R. 141.71 and 141.73(b), June 29, 2004.

2. The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU measured as specified in Section 3(1) of this administrative regulation.

(b) Diatomaceous earth filtration.

1. If a public water system uses diatomaceous earth filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month measured as specified in Section 3(1) of this administrative regulation.

2. The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU measured as specified in Section 3(1) of this administrative regulation.

3. Other filtration technologies. A public water system may use a filtration technology not listed in subsection (1) or (2) of this section if demonstrated in accordance with 40 C.F.R. 141.73(d), June 29, 2004, using pilot-plant studies or other means described in 40 C.F.R. 141.73(d), June 29, 2004, that the alternative filtration technology
technology. In combination with disinfection treatment that meets the requirements of this administrative regulation, consistently achieve ninety-nine and nine-tenths (99.9) percent (3-log) removal or inactivation of Giardia lamblia cysts and 99.99 percent (4-log) removal or inactivation of viruses. If a system makes this demonstration, the requirements of subsection (1) of this section shall apply.

(4)(a) A semipublic water system shall provide a contact period of at least thirty (30) minutes between the chlorine and the water to allow adequate time for disinfection, or may enter into a protocol with the cabinet whereby the filtration and disinfection requirements of this administrative regulation shall be satisfied using filtration technology, disinfection technology, or a combination of both, if the technology shall achieve a ninety-nine and nine-tenths (99.9) percent (3-log) removal or inactivation of Giardia lamblia cysts and 99.99 percent (4-log) removal or inactivation of viruses.

(b) The protocol shall contain a schedule for maintenance and testing of the filtration and disinfection equipment to assure that the requirements of this subsection are met.

(c) Intensive bacteriological testing shall be included in the protocol.

(d) If surface water is a source of water, filtration shall be an element of the protocol.

(e) If groundwater is the only source of water, filtration shall be an element of the protocol.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. Analyses required by this administrative regulation shall be conducted in accordance with the requirements of 40 C.F.R. 141.74(a), effective July 1, 2007, June 29, 2004.

(2) Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water shall monitor in accordance with 40 C.F.R. 141.74(c), effective July 1, 2007, paragraphs (a) and (b) of this subsection, if filtration is installed.

(a) Turbidity measurements shall be performed by a public water system on representative samples of the system's filtered water at least every four (4) hours that the system serves water to the public.

(b) If a public water system substitutes continuous turbidity monitoring for grab sample monitoring, it shall validate the continuous measurement accuracy on a regular basis using a protocol approved pursuant to 40 C.F.R. 141.74, June 29, 2004.

(c) In addition, a system using continuous monitoring shall submit to the cabinet, a schedule of times when the monitoring will be recorded.

(d) The schedule shall reflect monitoring at least every four (4) hours the system serves water to the public.

(e) If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or disassembled earth filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing that less frequent monitoring is sufficient to indicate effective filtration performance in accordance with 40 C.F.R. 141.74(c)(1), June 29, 2004.

(f) If a system serves 500 or fewer persons, the system may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the cabinet determines in writing that less frequent monitoring is sufficient to indicate effective filtration performance in accordance with 40 C.F.R. 141.74(c)(1), June 29, 2004.

Section 4. Disinfection of New and Replaced Water Lines. (1) New construction projects and line extensions.

(a) Disinfection of water lines. A water distribution system, including storage, distribution, or other facilities to existing systems, shall be thoroughly disinfected before being placed in service.

(b) A water distribution system shall disinfect with chlorine or chloramine compounds in amounts that shall produce, as to produce, a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing.

(c) Other methods and testing procedures that provide an equivalent level of protection may be used if the cabinet grants prior written approval in accordance with 40 C.F.R. 141.21, effective July 1, 2007 (November 8, 2006).

(d) A new water distribution line shall not be placed into service until bacteriological samples taken at the points specified in paragraph (f) of this subsection are examined and are shown to be negative following disinfection.

(e) A water distribution system shall submit to the cabinet results of bacteriological samples for each new construction project, replacement, or extension to existing systems, after the disinfection and flushing.

(f) A sample shall be taken in the newly constructed line at each of the following points:

1. Within 1,200 feet downstream of each connection point between the existing and new lines;
2. One (1) mile intervals; and
3. Each dead end, without omitting any branch.

(g) A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses.
(h) Sample bottles shall be clearly identified as "special" construction tests, and the results submitted to the cabinet shall be clearly marked as "special" samples.

(i) Notification of analytical results shall be submitted to the cabinet with the routine monthly compliance bacteriological samples, unless the bacteriological samples are to be used to lift a boil water advisory.

(ii) Samples used to lift a boil water advisory shall be submitted to the cabinet as soon as results are known.

(ii) Line repairs due to breaks or ruptures.

(a) The system shall thoroughly flush the break area and maintain at least a minimum disinfector residual, pursuant to Section 1(1) of the administrative regulation.

(b) The system may leave the line in service or return the line to service before receiving bacteriological results and may forego a boil water advisory if:

1. Pressure is maintained;
2. The break area is thoroughly flushed; and
3. At least the minimum disinfector residual is maintained, pursuant to Section 1(1) of this administrative regulation.

(iii) The system shall take at least two (2) bacteriological tests, one (1) located before, or just upstream of, the break or rupture, and one (1) located behind, or just downstream of, the break or rupture, as close to the break or rupture as practical pursuant to 40 C.F.R. 141.21, effective July 1, 2007.

(iv) Additional samples may be required, if necessary to be representative of the area affected by the break.

(v) Sample bottles shall be clearly identified as "special" tests, and the results submitted to the cabinet shall be clearly marked as "special" samples.

(vi) Records of results shall be submitted to the cabinet with routine monthly compliance samples, unless the samples are required to lift a boil water advisory, and shall be maintained for one (1) year.

(vii) Samples needed to remove a boil water advisory shall be submitted to the cabinet as soon as the results are known.

(a) A water system shall notify the cabinet immediately if:

1. The pressure drops below twenty (20) pounds per square inch in the distribution system surrounding the break; or
2. A break or rupture occurs that requires more than eight (8) hours to repair, with the eight (8) hours beginning when the water system becomes aware of the break.

(b) Boil Water Advisories shall be issued in accordance with 401 KAR 8:020, Section 2(2).

(c) Reports pursuant to 401 KAR 8:020, Section 2(7)(c) shall not be required for a loss of pressure, break, or rupture occurring in service lines serving only one (1) single family residence.

(1) A community or nontransient noncommunity public water system shall maintain a log of all breaks or ruptures, which shall include the:

(a) Date and location of the break or rupture;
(b) Time it was discovered;
(c) Population affected;
(d) Length of time required to repair the break or rupture;
(e) Date and time disinfector residuals are detected; and
(f) Date and time bacteriological samples are taken.

(2) The log shall be available for inspection by the cabinet.

Section 5. Uncovered Facility. A public or semipublic water system subject to this administrative regulation shall not begin construction of an uncovered finished water storage facility.


Section 7. In addition to the other requirements of this administrative regulation, for disinfection and filtration, a public water system that uses surface water as a source and that serves less than 10,000 persons shall meet the requirements established in 40 C.F.R. 141.60 through 141.67, 141.172 through 141.175, and 141.65, effective July 1, 2007.

Section 8. In addition to the other requirements of this administrative regulation for disinfection and filtration, a public water system that uses surface water as a source and that serves less than 10,000 persons shall meet the requirements established in 40 C.F.R. 141.60 through 141.67, and 141.65, effective July 1, 2007.

Section 9. A public water system that uses surface water as a source shall meet the requirements for enhanced treatment for Cryptosporidium as established in 40 C.F.R. 141.70 through 141.723, effective July 1, 2007.

Section 10. A public water system that uses groundwater as a source shall comply with the requirements established in 40 C.F.R. 141.400 through 141.405, 141.65, and 141.16(c), effective July 1, 2007. (Subsections (3) through (6) of this section of the public water system:

(a) Uses as its source surface water or groundwater under the direct influence of surface water;
(b) Uses conventional filtration or direct filtration treatment;
(c) Recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes.

(2) Reporting—A system shall not notify the cabinet in writing by January 1, 2006 if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes.

(3) The notification shall include at least the following information:

(a) A plant schematic that shows:

1. The origin of all flows that are recycled, including:
   a. Spent filter backwash water;
   b. Thickener supernatant;
   c. Liquids from dewatering processes;

2. The hydraulic conveyance used to recycle them; and

3. The location where they are reintroduced back into the treatment plant;

(b) Typical recycle flow, in gallons per minute, or gpm;

(c) The highest observed plant flow experienced in the previous year, gpm;

(d) Design flow for the treatment plant in gpm; and

(e) The operating capacity for the plant, if the cabinet has approved the operating capacity.

(3) Required treatment techniques. A system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system or an alternative solution.

(a) If capital improvements are required to modify the recycle location, the capital improvements shall be completed no later than June 1, 2006.

(b) Recordkeeping—The system shall collect and retain on file the following recycle flow information for review and evaluation by the cabinet beginning June 1, 2004:

1. A copy of the recycle notification and information submitted to the cabinet as required by subsection (2) of this section;
2. A list of all recycle flows and the frequency with which they are recorded;
3. The average and maximum backwash flow rate through the filter and the average and maximum duration of the filter backwash process in minutes;
4. The typical filter run length and a written summary of how filter run length is determined;
5. The type of treatment provided for the recycle flow;
6. Data on the physical dimensions of the equalization or treatment unit;
7. The typical and maximum hydraulic loading rates;
8. The type of treatment chemicals used and average dose and frequency of use; and
9. The frequency at which solids are removed, if applicable.

VOLUME 35, NUMBER 9 — MARCH 1, 2009

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(As Amended at ARR'S, February 9, 2009)

401 KAR 8:200. Microbiological monitoring.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) directs the cabinet to enforce administrative regulations promulgated[ adopted] by the secretary for the regulation and control of the purification of water for public and semipublic use. E.O. 2005-572 and 2005-531 effective June 16, 2009, establish the Environmental and Public Protection and establish the new Energy and Environment Cabinet. This administrative regulation establishes a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This administrative regulation also specifies requirements if tests show maximum contaminant levels have been exceeded. This administrative regulation is more stringent than the corresponding federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be taken each month, whereas, under federal regulations, an inspection is to be not more stringent than federal regulations.

Section 1. A public water system shall meet the requirements established in 40 C.F.R. 141.21, 141.52, 141.63, effective July 1, 2007, except that a public water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation.

Section 2. A semipublic water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation.

Section 3. Population served shall be determined by the appropriate method established in this section.

(1) A supplier of water serving an area defined by an official census count or population projection shall use the most recent official census count or official population projection.

(2) If a supplier of water serves an area without available official figures for population, if no official figures are available on the area served, the population served shall be considered to be the greater of:
   (a) A factor of not less than 2.97 times the number of residential meters; or
   (b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections. All suppliers of water operating a public or semipublic water system, including suppliers operating those systems which provide water purchased from another system, shall meet the requirements of this administrative regulation.

(3) Routine monitoring for total coliform bacteria. A public water system shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample collection plan. A public water system shall submit the written sample collection plan to the cabinet in a manner prescribed by the cabinet and obtain the cabinet's approval of the plan. The plan shall contain the following elements:
   (a) A complete description, address, city and zip code for each sample site. If a post-office box number or rural route number is used, the highway number, rural route number or other information adequate to locate the sample site shall be included.
   (b) The site shall be identified as residential, commercial, industrial, educational, or some other specific type of sampling location.
   (c) A map shall be submitted with the written plan showing the public water system's distribution system and the location of all proposed sites. A duplicate map shall be made available to the public water system.

(4) The monitoring frequency for total coliforms for public water systems shall be based on the population served by the system as follows:

<table>
<thead>
<tr>
<th>Population Served</th>
<th>Minimum Number Monthly Samples</th>
<th>Population Served</th>
<th>Minimum Number Monthly Samples</th>
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</thead>
<tbody>
<tr>
<td>0-2,600</td>
<td>2</td>
<td>25,001-33,000</td>
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</tr>
<tr>
<td>2,601-3,500</td>
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<td>28,000-33,000</td>
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<td>60,001-79,000</td>
<td>10</td>
<td>60,000-33,000</td>
<td>26</td>
</tr>
</tbody>
</table>

(4) Population served calculation. For purposes of determining the population served, the applicable method below shall be used:
   (a) If the supplier of water serves an area defined by an official census count or a population projection, the most recent census count or official population projection shall be used.
   (b) If no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three times the number of residential connections or a factor of not less than three times the total number of all connections, whichever is greater.

(4) Semipublic systems. Semipublic water systems shall cause samples to be tested, for the purpose of determining the presence of pathogenic bacteria, at least once a month. If the results of an analysis show the presence of pathogenic bacteria, the system shall be considered to be out of compliance with this administrative regulation.
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or absence-coliform, at least twice per month, or in accordance with a protocol agreed to pursuant to 401 KAR 8-150, Section 2(5). If coliforms are present, appropriate repeat samples shall be taken.

(6) Sampling schedule. Each public and camp瑛ible water system shall take routine samples to determine the presence or absence of coliform. No more than half of the samples shall be taken in one (1) week. Results of the analyses of the samples shall be submitted to the cabinet no later than ten (10) days after the end of the month for which the samples were taken. If the tenth-day falls on a Saturday, Sunday or holiday the results shall be submitted on the following working day. A noncommunity water system shall sample for total coliform bacteria per 100 milliliters twice each month of operation. Seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by the sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(7) Forwarding samples. The cabinet shall, upon request, notify a water supplier as to those commercial or state laboratories, certified in accordance with 401 KAR 8-150, to which samples may be sent for determining the presence or absence of coliform. The samples shall be forwarded to a certified laboratory by the most expeditious or efficient method available to the water supplier.

(7) Sample collection. Samples taken by or on behalf of public water systems shall be collected in sterile prepared and sterilized in accordance with "Standard Methods". When the sample is collected, the disinfectant residue shall be determined and recorded on the form provided by the laboratory with the sample container. Bacteriological sampling forms shall be fully and accurately completed on the sample card. The disinfecting agent shall be removed from the sample at the time of collection.

(8) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation. Repeat samples taken pursuant to subsections (a) of this section shall be invalid. The disinfecting agent shall be removed from the sample at the time of its collection.

(9) Repeat monitoring.

(a) If a routine sample is total coliform positive, the public water system shall collect a set of repeat samples within twenty-four (24) hours of being notified of the positive result. The system shall collect at least three (3) repeat samples for each total coliform positive sample found. The cabinet may extend the twenty-four (24) hour limit on a case-by-case basis if the system demonstrates that it has a logistical problem in collecting the repeat samples within twenty-four (24) hours that is beyond its control. If an extension is granted, the cabinet shall specify how much time the system has to complete the repeat sample.

(b) The public water system shall collect at least one (1) repeat sample from the sampling tap where the original total coliform positive sample was taken, and at least one (1) repeat sample at a tap within five (5) service connections upstream and at least one (1) repeat sample at a tap within five (5) service connections downstream of the original sampling tap. If a total coliform-positive sample is at the end of the distribution system, or one (1) away from the end of the distribution system, the cabinet may waive the requirement to collect a repeat sample upstream or downstream of the original sampling tap, but a total of three (3) repeat samples shall be collected.

(c) The public water system shall collect all repeat samples on the same day.

(d) If one (1) or more repeat samples in the col is total coliform positive, the public water system shall collect an additional set of repeat samples in a manner specified in paragraphs (a), (b), and (c) of this subsection. The public water system shall collect the additional samples within twenty-four (24) hours of being notified of the positive result, unless the cabinet extends the limit as provided in paragraph (a) of this subsection. The public water system shall repeat the process until either total coliforms are not detected in one (1) complete set of repeat samples or the system determines that the MCL for total coliforms set forth in Section 2 of this administrative regulation has been exceeded and notifies the cabinet, and the public, pursuant to 401 KAR 8-150. The cabinet may require further testing until all samples are total coliform negative.

(10) If a system collects fewer than five (5) routine samples per month has one (1) or more total coliform-positive samples and the cabinet does not invalidate the sample pursuant to subsection (13) of this section, the public water system shall collect at least five (5) routine samples during the next month the system provides water to the public.

(11) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another or routine sample from within five (5) adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample as a repeat sample instead of a routine sample.

(12) Results of routine and repeat samples not invalidated by the cabinet shall be included in determining compliance with the MCL for total coliforms set forth in Section 2 of this administrative regulation.

(13) Invalidation of total coliform samples. A total coliform positive sample invalidated under this subsection shall not count towards meeting the minimum monitoring requirements of the cabinet.

The cabinet may invalidate a total coliform positive sample only if the conditions of clauses 1, 2, or 3 of this subparagraph are met.

1. The laboratory establishes to the satisfaction of the cabinet that improper sample analysis caused the total coliform positive result.

2. The cabinet, on the basis of the results of repeat samples collected as required by subsection (9) of this section, determines in writing that the total coliform-positive sample resulted from a demosaic or other nondistribution system plumbing problem. The cabinet shall not invalidate a sample on the basis of repeat sample results unless every repeat sample collected at the same tap as the original total coliform-positive sample is total coliform positive and every repeat sample collected within five (5) service connections of the original tap is total coliform negative. The cabinet shall not invalidate a total coliform-positive sample on the basis of repeat samples if every repeat sample is total coliform negative, or if the public water system has only one (1) service connection.

3. The cabinet has substantial grounds to believe that a total coliform positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. A decision made by the cabinet shall be based on a decision rendered by the Director of the Division of Water upon the written recommendation of the Manager of the Drinking Water Branch. The written decision shall be submitted to the U.S. Environmental Protection Agency and shall be available to the public. The written decision shall state the specific cause of the total coliform-positive sample and shall state what action the public water system has taken, or will take, to correct the problem. The public water system shall, regardless of the cabinet action taken under the clause, take the repeat samples required under subsection (9) of this section. The cabinet shall not invalidate a total coliform-positive sample solely on the grounds that each repeat sample is total coliform negative.

(14) Sanitary surveys.
(a) A public water system which does not collect five (5) or more routine samples per month shall undergo an initial sanitary survey by June 20, 1994, if it is a community public water system, and June 20, 1996, if it is a noncommunity public water system. Therefore, the system shall undergo a sanitary survey at least once every five (5) years except that a noncommunity water system using only disinfected ground water not under the influence of surface water, shall undergo a sanitary survey at least once every ten (10) years. The cabinet shall review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(b) Information relating to a course of contamination within a delineated wellhead protection area, which is collected in the course of developing and implementing a U.S. Environmental Protection Agency-approved wellhead protection program, may be considered in conducting a sanitary survey of a public water system using ground water if the information was collected since the last time the public water system was subject to a sanitary survey.

(c) Sanitary surveys shall be performed by the cabinet or an agent approved by the cabinet. Public water systems are responsible for ensuring that required sanitary surveys take place.

(2) Fecal coliforms—Escherichia coli (E. coli) testing.

(a) If a routine or repeat sample is total coliform-positive, the public water system shall analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the public water system may test for E. coli in lieu of total coliforms if fecal coliforms or E. coli are present. The system shall notify the cabinet by the following day, the system is notified of the test result pursuant to 401 KAR 8:020, Section 2(7)(a).

(b) The cabinet may allow a public water system, on a case-by-case basis, to forgo fecal coliform or E. coli testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli-positive and notifies the cabinet as specified in paragraph (a) of the subsection and the provisions of Section 2(2) of the administrative regulation.

(3) Analytical methodology. The analysis for the presence or absence of total coliforms shall commence within thirty (30) hours of the sample being collected, unless the cabinet waives the requirement in writing. Analysis for microbiological contaminants shall be conducted in accordance with 40 C.F.R. 141.24(f), in effect on July 1, 1996, hereby adopted without change.

(4) Response to violations.

(a) If a public water system exceeds the MCL for total coliforms set forth in Section 2 of this administrative regulation, it shall report the violation to the cabinet no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 401 KAR 8:070.

(b) If the public water system fails to comply with a coliform monitoring requirement, including the sanitary survey requirement, it shall report the monitoring violation to the cabinet within ten (10) days after the system discovers the violation, and notify the public in accordance with 401 KAR 8:070.

Section 2—Maximum-Contaminant Levels (MCLs) for Microbiological Contaminants. (1) The MCL is based on the presence or absence of total coliforms in a sample.

(a) If a public water system collects at least forty (40) samples per month and no more than five and zero tenths (5.0) percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) If a public water system collects fewer than forty (40) samples per month, and no more than one (1) sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) A fecal coliform-positive repeat sample or E. coli-positive repeat sample, or a total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 401 KAR 8:070, this violation may pose an acute risk to health.

(3) A public water system shall determine compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section for each month in which it is required to monitor for total coliforms.

(4) The following technology are the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section:

(a) Protection of wells from contamination by coliforms by appropriate wellhead and construction.

(b) Maintenance of a disinfectant residual throughout the distribution system.

(c) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system.

(d) Filtration or disinfection of surface water, as described in 401 KAR 8:150, or disinfection of ground water using strong oxidants such as chlorine, chloramines, ozone; or

(e) The development and implementation of an EPA-approved State-Wellhead Protection Program under 42 U.S.C.A. 300h-7, state programs to establish wellhead protection areas.

Section 2—Variances and Exemptions. Variances or exemptions from the maximum contaminant level for total coliforms set forth in Section 2 of this administrative regulation shall not be permitted unless the public water system demonstrates to the cabinet that the violation of the total coliform maximum contaminant level is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic coliform bacteria, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. In making the demonstration, the public water system shall meet all the requirements of 401 KAR 8:050, including submission of a compliance schedule acceptable to the cabinet. In addition, the public water system shall demonstrate to the cabinet's satisfaction that the following criteria have been met before the cabinet may consider a variance:

(a) Over the past thirty (30) days, water entering the distribution system is:

(b) Free from fecal or E. coli occurrence based on at least daily sampling;

(c) Contains less than one (1) total coliform per 100 milliliters of influent water in at least ninety-five (95) percent of all samples based on at least daily sampling;

(d) Complies with the total turbidity requirements of 401 KAR 8:150, Section 2, and

Section 2—Variances and Exemptions. Variances or exemptions from the maximum contaminant level for total coliforms set forth in Section 2 of this administrative regulation shall not be permitted unless the public water system demonstrates to the cabinet that the violation of the total coliform maximum contaminant level is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic coliform bacteria, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. In making the demonstration, the public water system shall meet all the requirements of 401 KAR 8:050, including submission of a compliance schedule acceptable to the cabinet. In addition, the public water system shall demonstrate to the cabinet's satisfaction that the following criteria have been met before the cabinet may consider a variance:

(a) Over the past thirty (30) days, water entering the distribution system is:

(b) Free from fecal or E. coli occurrence based on at least daily sampling;

(c) Contains less than one (1) total coliform per 100 milliliters of influent water in at least ninety-five (95) percent of all samples based on at least daily sampling;

(d) Complies with the total turbidity requirements of 401 KAR 8:150, Section 2, and

(e) Contains a continuous disinfection residual consistent with 401 KAR 8:150, Section 1;

(f) The public water system has had no waterborne disease outbreak while being operated in its present configuration;

(g) If the public water system is a public water system, the cabinet and local health departments to assess illness possibly attributable to microbial occurrence in the public drinking water system.

(2) The public water system has evaluated, on a monthly basis, at least the number of samples specified in Section 1(2) of the administrative regulation and has not had an E. coli positive sample within the last six (6) months, unless the system demonstrates to the cabinet that the occurrence is not due to contamination entering the distribution system;

(3) The public water system has undergone a sanitary survey conducted by a party approved by the cabinet within the past twelve (12) months;

(4) The public water system has a cross-connection control program acceptable to the cabinet and performs an audit of the effectiveness of the program;

(5) The public water system agrees to submit a biofilm control plan to the cabinet within twelve (12) months of the granting of the first variance for a variance;

(6) The public water system monitors general distribution system bacterial quality by conducting heterotrophic bacteria plate counts at least a monthly basis at a minimum of ten (10) percent of the number of total coliform sites specified for that system's size in Section 2(3) of this administrative regulation preferably using the R2A medium in Method 907A, 907B, or 907C, as set forth in the
401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels.

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>MCL (mg/l)</th>
<th>Methodology</th>
<th>Detection Limit (mg/l)</th>
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<tbody>
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<td>Antimony</td>
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<td>Atomic Absorption, Fumigation</td>
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<td>Atomic Absorption, Platform-Stabilized Temperature, Inductively-Coupled Plasma</td>
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<td>Transmission-Electron Microscopy</td>
<td>0.01-MFL</td>
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<td>Atomic, Fumigation-Technique, Inductively-Coupled Plasma</td>
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RELATES TO: KRS 224.10-1100(90), 224.10-110, 40 C.F.R. 141.11, 141.23, 141.40, 141.41, 141.50, 141.51, 141.61, 141.62, EO 2008-507, 2008-531[Part 141]

STATUTORY AUTHORITY: KRS 224.10-1100(90), 224.10-110(2), 40 C.F.R. 141.11, 141.23(4), 141.24, 141.40, 141.41, 141.50, 141.51, 141.61, 141.62, 42 U.S.C. 300f-300f-28[Chester 6A Subchapter-XII]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) authorizes the [Environmental and Public-Protection Cabinet] Cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes sampling and analytical requirements for certain inorganic and organic chemicals and sets maximum contaminant levels for those chemicals which, if exceeded, may affect public health.

Section 1. A public water system shall meet the requirements for inorganic chemicals in accordance with 40 C.F.R. 141.11, 141.23, 141.41, 141.51, and 141.62, effective July 1, 2007.

Section 2. A public water system shall meet the requirements for organic chemicals in accordance with 40 C.F.R. 141.24, 141.50, and 141.61, effective July 1, 2007.
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</tr>
<tr>
<td></td>
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<td>Manual Cold-Vapor Technique</td>
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<td></td>
<td></td>
<td>Atomic Absorption; Platform</td>
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<td>Thallium</td>
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<td>Atomic Absorption; furnace</td>
<td>0.0004</td>
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*The MCL reported for U.S.-EPA Method 200.9, Atomic Absorption; Platform-Stabilized Temperature, was determined using a 2X concentration step during sample digestion. The MCL determined for samples analyzed using direct analysis, or no sample digestion, will be higher. Using multiple depositions, U.S.-EPA Method 200.9 is capable of obtaining a MCL of 0.0001 mg/L.

*Using selective-law monitoring, U.S.-EPA Method 200.8, ICP-Mass Spectrometry, is capable of obtaining a MCL of 0.0001 mg/L.

*Recommended MCL for Nickel on February 9, 1995.

1. If the population served by the system is greater than 2,500 persons, then applying shall occur only at sampling points within a single system. In a system that serves less than or equal to 2,500 persons, the collection shall permit completing the systems in accordance with conditions established in 40 C.F.R. 141.22(c)(4)(ii), March 25, 2003.

2a. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling.

b. The duplicates shall be analyzed by a certified laboratory, and the results shall be reported to the cabinet within fourteen (14) days after completing analysis of the composite sample, if the holding time is not exceeded.

3. The frequency of monitoring for asbestos shall be in accordance with Section 2 of this administrative regulation.

4. The frequency of monitoring for antimony arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be in accordance with Section 3 of this administrative regulation.

5. The frequency of monitoring for nitrate shall be in accordance with Section 4 of this administrative regulation, and the frequency of monitoring for nitrates shall be in accordance with Section 5 of this administrative regulation.

Section 2: Asbestos. The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos-specified in Section 12 of this administrative regulation shall be as follows:

1. Each community and nontransient noncommunity water system shall monitor for asbestos during the first three (3) year compliance period of each nine (9) year compliance cycle beginning in the initial compliance period.

2. If the system believes it is not vulnerable to either asbestos contamination due to corrosion of asbestos cement pipe, or both, it may apply to the cabinet for a waiver of the monitoring requirement in subsection (1) of this section. If the cabinet does not grant the waiver pursuant to subsection 2(a) and (b) of this section, the system shall be required to monitor for asbestos pursuant to subsection (1) of this section.

3. The cabinet may, in accordance with conditions established in 40 C.F.R. 141.22(b)(5), March 25, 2003, grant a waiver of the monitoring requirement in subsection (1) of this section based on a consideration of the following factors:

(a) Potential asbestos contamination of the water source; and

(b) The use of asbestos cement pipe for finished water distribution and for the corrosive nature of the water.

4. A waiver shall remain in effect until the completion of the three (3) year compliance period.

5. A new waiver shall be requested and received for each compliance period.

6. A system not receiving a waiver shall monitor in accordance with the provisions of subsection (1) of this section.

7. A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

8. A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of Section 1 of this administrative regulation.

9. A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.
(9) A system that exceeds the maximum contaminant level specified in Section 12 of this administrative regulation, as determined in Section 8 of this administrative regulation, shall monitor quarterly beginning in the next quarter after the violation occurred.

(9)(a) The cabinet may decrease the quarterly monitoring requirement to the frequency specified in subsection (1) of this section if the system is reliably and consistently below the maximum contaminant level.

(9)(b) This determination by the cabinet shall be made if a groundwater system takes a minimum of two (2) quarterly samples, and a surface- or combined surface and ground-water system takes a minimum of four (4) quarterly samples.

(10) If monitoring data collected after January 1, 1990 are consistent with the requirements of this section, then the cabinet shall allow systems to use that data to satisfy the monitoring requirements for the initial compliance period that began January 1, 1993.

Section 3. Inorganic Contaminants—other than Arsenic, Nitrate, and Nitrite. The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in Section 12 of this administrative regulation for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoroide, mercury, nickel, selenium, and strontium shall be as follows:

(1) Groundwater systems shall take one (1) sample at each sampling point once every three (3) years.

(2) Surface-water systems, or combined surface and ground, shall take one (1) sample annually at each sampling point.

(3) A groundwater system shall take one (1) sample at each sampling point during each compliance period.

(4) A surface-water system, or combined surface and ground-water system, shall take one (1) sample annually at each sampling point.

(5)(b) The system may apply to the cabinet for a waiver from the monitoring frequencies specified in subsection (1) of this section.

(6) The cabinet may grant a waiver for cyanide only if it is determined that the system is not vulnerable pursuant to 40 C.F.R. 414.23(c)(2), March 25, 2003.

(7) A public water system shall take a minimum of one (1) sample while a waiver granted under subsection (2) of this section is effective.

(8)(a) A waiver may be granted in accordance with criteria established in 40 C.F.R. 414.23(c)(4), March 25, 2003. If surface water systems have monitored annually for at least three (3) years and groundwater systems have conducted a minimum of three (3) rounds of monitoring.

(9) A system that uses a new water source shall not be eligible for a two-year waiver until the (3) rounds of monitoring from the new source have been completed.

(10) In determining the applicable reduced monitoring frequency, the cabinet shall consider:

1. Reported concentrations from all previous monitoring;
2. The degree of variation in reported concentrations; and
3. Factors that may affect contaminant concentrations such as:
   a. Changes in groundwater pumping rates;
   b. Changes in the system's configuration;
   c. Changes in the system's operating procedures; or
   d. Changes in stream flows or characteristics.

(11) A decision by the cabinet in accordance with criteria established in 40 C.F.R. 414.23(c)(6), March 26, 2003 to grant a waiver shall be in writing and shall establish the basis for the determination. The determination may be initiated by the cabinet or upon an application by the public water system.

(12) The public water system shall specify the basis for its request.

3. The cabinet shall review and, if applicable, revise the monitoring frequency if the system submits new monitoring data or if other data relevant to the system's monitoring frequency become available.

(4) A system that exceeds the maximum contaminant levels as calculated in Section 8 of this administrative regulation shall monitor quarterly beginning in the next quarter after the violation occurred.

(5)(a) The cabinet shall decrease the quarterly monitoring requirement to the frequencies specified in subparagraphs (a) and (b) of this subsection if the system is reliably and consistently below the maximum contaminant level.

(b) This determination shall only be made if a groundwater system takes a minimum of two (2) quarterly samples and a surface-water system takes a minimum of four (4) quarterly samples.

(6)(a) A new system or a system that uses a new source of water that began operation after November 15, 1990 shall demonstrate compliance with the maximum contaminant levels in Section 12 of the administrative regulation within a period of time specified by 40 C.F.R. 414.23(c)(2), March 26, 2003.

(6) The system shall also comply with the initial sampling frequencies specified by this administrative regulation to ensure that the system is able to demonstrate compliance with the maximum contaminant levels.

(7) Routine and in-use monitoring frequencies shall be conducted in accordance with the requirements of this administrative regulation.

Section 4. Nitrate. A public water system, either community, nontransient none community, or transient none community, shall monitor to determine compliance with the maximum contaminant level for nitrate in Section 12 of this administrative regulation.

(1)(a) A community or nontransient none community water system served by a groundwater source shall monitor annually.

(b) A community or nontransient none community water system served by a surface water source shall monitor quarterly.

(2)(a) For a community or nontransient none community water system, the repeat-monitoring frequency for groundwater systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level.

(b) The cabinet may allow a groundwater system to reduce the sampling frequency to annually if four (4) consecutive quarterly samples are reliably and consistently less than the maximum contaminant level in accordance with conditions established in 40 C.F.R. (d)(2), March 26, 2003.

(3)(a) For a community or nontransient none community water system, the cabinet shall allow a surface-water system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty (50) percent of the maximum contaminant level.

(b) A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty (50) percent of the maximum contaminant level (MCL).

(4) Each transient none community water system shall monitor annually.

(5) After the initial round of quarterly sampling is completed, each community and nontransient none community system that monitors annually shall take subsequent samples during the quarters that previously resulted in the highest analytical result.

(6) A noncommunity water system may exceed the maximum contaminant level for nitrate if the conditions of Section 17 of this administrative regulation are met.

Section 5. Nitrite. A public water system (community, nontransient none community, or transient none community system) shall monitor to determine compliance with the maximum contaminant level for nitrite in Section 12 of this administrative regulation.

(1) A public water system shall collect one (1) sample at each sampling point in the compliance period.

(2) After the initial sample, a system with an analytical result for nitrite of less than fifty (50) percent of the MCL shall monitor at the frequency specified in subsection (3) of this section.

(3)(a) For a community, nontransient none community, or transient none community water system, the repeat-monitoring frequency for groundwater systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty (50) percent of the maximum contaminant level.
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(b) The cabinet may allow a system to reduce the sampling frequency to annually if determining the system is reliably and consistently less than the maximum contaminant level in accordance with conditions established in 40 C.F.R. 141.23(d)(2), March 25, 2003.

(4) A system that is monitoring annually shall take each subsequent sample during the quarter that previously resulted in the highest analytical result.

Section 6. Confirmation Sampling. (1) If the results of sampling for antimony, arsenic, selenium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, or selenium, or thallium indicate an exceedance of the maximum contaminant level, the cabinet may, in accordance with conditions established in 40 C.F.R. 141.23(c)(1), March 25, 2003, require that one additional sample be collected within two (2) weeks after the initial sample was taken at the same sampling point.

(2) If nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within twenty-four (24) hours of the system's receipt of notification of the analytical results of the first sample.

(a) The public water system shall be required to comply with Secretary's Notice of Violation published in accordance with the requirements for a Tier 1 notice in 401 KAR 8:070.

(3)(a) If a confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged.

(b) The resulting average shall be used to determine the system's compliance in accordance with Section 6 of this administrative regulation.

(c) The cabinet shall delete results of obvious sampling errors.

Section 7. The cabinet may require more frequent monitoring than specified in Sections 2 to 5 of this administrative regulation or may require confirmation samples for positive and negative results if necessary to ensure the protection of public health.

Section 8. Public water systems may apply to the cabinet to conduct more frequent monitoring than the minimum sampling frequencies specified in this administrative regulation.

Section 9. Compliance Determinations. Compliance with Section 12 of this administrative regulation shall be determined based on the analytical result obtained at each sampling point.

(a) For a system that is conducting monitoring at a frequency of at least once every six months, compliance with the maximum contaminant levels for antimony, arsenic, selenium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, or selenium, or thallium shall be determined by a running annual average at any sampling point.

(b) If the average at any sampling point is greater than the maximum contaminant level, then the system shall be out of compliance.

(c) Any one (1) sample causing the annual average to be exceeded, shall then the system shall be out of compliance immediately.

(d) Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

(e) If a system fails to collect the required number of samples, compliance or the average concentration shall be based on the total number of samples collected.

(f) For a system that is monitoring annually, or less frequently, the system shall be deemed to be out of compliance with the maximum contaminant levels for antimony, arsenic, selenium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, or selenium, or thallium if the level of a contaminant at any sampling point is greater than the maximum contaminant level.

(g) If a confirmation sample shall be required, the determination of compliance shall be based on the average of the two (2) samples.
### Key to Bats in Table

| 3 | Activated Alumina | 6 | Lime Softening - Not BAT for systems with less than 600 service connections. |
| 2 | Coagulation and Filtration | 7 | Reverse Osmosis |
| 3 | Direct and Deammoniation Filtration | 8 | Corrosion Control |
| 4 | Granular Activated Carbon | 9 | Electrolysis |
| 6 | Ion Exchange | 10 | Chlorine |
| 11 | Ultraviolet |
| 12 | Oxidation/Filtration |

### Section 14 - Affordable Technology

The following table identifies the affordable technology, treatment technique, or other means available to systems serving ten thousand (10,000) or fewer persons, for achieving compliance with the maximum contaminant level for arsenic in Section 12 of the administrative regulation.

- **Small System Compliance Technologies for Arsenic**
  - **Small system compliance technology:** Affordable for listed small system categories.
  - **Activated Alumina, centralized:** All size categories.
  - **Activated Alumina, point-of-use:** All size categories.
  - **Coagulation-Filtration:** 501 - 3,300; 3301 - 10,000.
  - **Coagulation-assisted Microfiltration:** 501 - 3,300; 3301 - 10,000.
  - **Electrodialysis-reversal:** 501 - 3,300; 3301 - 10,000.
  - **Enhanced coagulation, filtration:** All size categories.
  - **Enhanced lime softening, pH 10.6:** All size categories.
  - **Ion Exchange:** All size categories.
  - **Lime Softening:** 501 - 3,300; 3301 - 10,000.
  - **Oxidation/Filtration:** All size categories.
  - **Reverse Osmosis, centralized:** 501 - 3,300; 3301 - 10,000.
  - **Reverse Osmosis, point-of-use:** All size categories.

- **Small system compliance technologies shall be affordable and technically feasible for small systems.**
- **Small system compliance technologies for Arsenic-V, Preoxidation may be required to convert Arsenic III to Arsenic V.**
- **Three (3) categories of small systems serving more than twenty-five (25) but fewer than 501; serving more than 500 but fewer than 3,301; and those serving more than 3,300 but fewer than 10,001.**
- **If point-of-use or point-of-entry devices are used for compliance, the program to ensure proper long-term operation, maintenance, and monitoring shall be provided by the system to ensure adequate performance.**

4. **Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.**
5. **Technologies reject a large volume of water. May not be applicable for areas where water quantity may be an issue.**
6. **To obtain high removals, iron to arsenic ratio shall be at least 20:1.**

#### Section 15 - Special Monitoring for Sodium
1. **Theos-required to sample. Suppliers of water for community public water systems shall collect and analyze one (1) sample per plant at the entry point of the distribution system for the determination of sodium concentration levels.**
2. **Sampling frequency:**
   - **Community water systems, surface source:** A system that uses surface water sources in whole or in part shall collect and analyze samples annually.
   - **Samples required:**
     - **The minimum number of samples required to be taken by the system is based upon the number of treatment plants used by the system, except that the cabinet shall consider multiple wells drawing raw water from a single aquifer to be one (1) treatment plant for the purpose of determining the minimum number of samples.**
     - **2. Samples shall be collected one (1) time during the wet season and one (1) time during the dry season per calendar year.**
   - **Community water systems, groundwater sources:** A system that uses only groundwater sources shall collect and analyze samples annually.
2. **Samples required:**
   - **The supplier of water may be required to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.**
   - **Analyses for sodium shall be in accordance with methods approved for drinking water by the U.S. EPA.**
   - **In 40 C.F.R. 141.23(k), January 26, 2003.**
   - **3. Reporting:**
     - **4. The supplier of water shall report to the cabinet the results of the analyses for sodium within ten (10) days of the end of the month in which the sample results were received or within ten (10) days following the end of the required monitoring period, as determined by the cabinet. In accordance with 40 C.F.R. 141.41, December 5, 2004 whichever of these is first.**
     - **5. If more than annual sampling shall be required, the supplier shall report the average sodium concentration within ten (10) days of the end of the month in which the average results of the last sample used for the annual average was received.**
   - **4. Acceptable sodium limits:**
     - **(a) A level of twenty (20) mg/L of sodium shall be considered an upper concentration for drinking water.**
     - **(b) The supplier of water shall notify appropriate local and state public health officials of the sodium levels, by written notice by direct mail, within three (3) months of testing.**
     - **(c) A copy of each notice required to be provided by this subsection shall be sent to U.S. EPA and the cabinet within ten (10) days of the issuance.**
     - **(d) Public notification. The provisions of 401-KAR 8:070 shall not apply to sodium levels unless the water supplier chooses to notify the public.**

#### Section 16 - Variance and Exemptions for Fluoride
In addition to the requirements for requesting a variance or exemption provided in 401-KAR 8:060, the following provisions shall be applicable if a variance or exemption from the maximum contaminant level for fluoride is requested:
1. **4. Best available technology.** The following are the best available technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant level for fluoride:
   - **(a) Activated alumina absorption, centrally applied; and**
   - **(b) Reverse osmosis, centrally applied.**
   - **2. Public water systems shall apply the best available technology, treatment techniques, or other means generally available to the water system and specified in subsection (1) of this section, prior to the cabinet's consideration of a variance request for fluoride, unless:**
(a) Pursuant to KAR 8-060, the public water system submits to the cabinet information, based upon studies of the public water system and other relevant information, described in 40 C.F.R. 144.610(e), April 2, 1986, that demonstrates that the technology, treatment technique, or other available means identified in subsection (1) of this section is not available and effective for the public water system; and

(b) The best available technology, treatment technique, or other means generally available is not available and effective for the system.

(3) Prior to granting a variance, the cabinet shall issue a compliance schedule that requires the public water system to examine the following treatment techniques to determine the probability that any of these methods will significantly reduce the level of fluoride for that system, and, if so, to determine if those methods are technically feasible and economically reasonable; and to determine if the fluoride reductions obtained are commensurate with the costs incurred with the installation and use of the treatment methods for that system:

(a) Modification of lime softening;
(b) Alum coagulation;
(c) Electro-decarbonation;
(d) Anion exchanger renews;
(e) Well field management;
(f) Accumulate waste; and

(g) Regionalization.

(4) If the cabinet determines, in accordance with 40 C.F.R. 144.610(c), April 2, 1986, that a treatment technique identified in subsection (4) of this section is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with costs incurred with the installation and use of the treatment technique for the public water system, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule issued pursuant to KAR 8-060.

Section 17. Nitrate Exemption. (1) A noncommunity water system may exceed the maximum contaminant level for nitrate, but shall not exceed twenty (20) mg/L, if the system demonstrates to the satisfaction of the cabinet, in accordance with 40 C.F.R. 141.11(d) January 22, 2001, that the conditions of subsection (2)(a) to (d) of the section shall be met.

(2) A monitoring value above twenty (20) mg/L, or if a condition of this section is not met for monitoring values above ten (10) mg/L shall be considered a violation.

(a) The water shall not be available to children under six (6) months of age;
(b) The noncommunity water system shall notify the public according to the requirements for a Tier 1 notification in 401 KAR 8-070, including continuous posting;
(c) The water shall notify local and state health officials of the exceedance; and

(d) Advance health effects shall not result.

HENRY LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.
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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, February 9, 2009)

401 KAR 8:300. Lead and copper.

RELATES TO: (KRS) 40 C.F.R. 141.42 [141.23(a)], 141.43, 141.80-141.91, 141.154, 42 U.S.C. 300f-300i-26, EO 2008-507, 2008-531[2009(c), (e)(a), (e)(b)]

STATUTORY AUTHORITY: KRS 224.10-100(228), 224.10-110(2), 40 C.F.R. [141.23(a), 141.43, 141.80-141.91, 42 U.S.C. 300f-300i-26, 2009-300g, 2009-300g-6(6), 2009-300g-6(7), 2009-300g-6(26)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(228) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, establish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation bans lead in drinking water facilities and provides standards for lead and copper in drinking water.

Section 1. A public water system shall meet the requirements for control of lead corrosivity and copper as established in:

(1) 40 C.F.R. 141.42, 141.43, 141.82, and 141.91, effective July 1, 2007; and

(2) 40 C.F.R. 141.80, 141.81, 141.83 through 141.90, and 141.154, effective December 10, 2007 [Prohibition of Use of Lead Pipe, Solder, and Flux Pipe, solder, or flux used in the installation or repair of a public water system, or plumbing in a residential or recreational facility, for providing water for human consumption that is connected to a public water system, shall be lead-free, as defined in 401 KAR 8-010. This prohibition shall not apply to leaded joints necessary for the repair of cast iron pipe.

Section 2. General Requirements. (1) The requirements of this administrative regulation shall constitute the primary drinking water regulations for lead and copper. Each provision of this administrative regulation shall apply to community water systems and nontransient, noncommunity water systems, referred to as "water systems" or "systems".

(2) The requirements in this administrative regulation shall take effect upon adoption.

(3) An administrative regulation establishes a treatment technique that includes regulating levels for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered by lead and copper action levels measured in samples collected at consumer taps.

(4) Lead and copper action levels.

(a) The lead action level shall be exceed if the concentration of lead in more than ten (10) percent of tap water samples collected during any monitoring period conducted in accordance with Section 8 of this administrative regulation is greater than 0.015 mg/L, i.e., if the 90th percentile lead level is greater than 0.015 mg/L.

(b) The copper action level shall be exceed if the concentration of copper in more than ten (10) percent of tap water samples collected during any monitoring period conducted in accordance with Section 8 of this administrative regulation is greater than any of the following action levels:

(1) If the concentration of copper is greater than one hundred (100) mg/L, the copper action level shall be exceed if the concentration of copper is greater than one hundred and ten (110) mg/L.

(2) The 90th percentile lead and copper levels shall be compared as follows:

1. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, beginning with single integers, beginning with the number one (1) for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

2. The number of samples taken during the monitoring period shall be multiplied by zero and nine-tenths (0.9).

3. The contaminant concentration for the number of samples yielded by the calculation in subparagraph 2 of this paragraph shall be the 90th percentile contaminant level.

4. For a water system serving fewer than 100 people that collects five (5) samples per monitoring period, the 90th percentile shall be computed by taking the average of the highest and second highest concentrations.

(g) Corrosion control treatment requirements.

(1) A water system shall install and operate optimal corrosion control treatment as defined in 401 KAR 8.010.

- 2025 -
(b) A water system that complies with the applicable corrosion control treatment requirements approved by the cabinet under Sections 3 and 4 of this administrative regulation shall be deemed in compliance with the treatment requirement contained in paragraph (a) of this subsection.

(6) Source water treatment requirements. A system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the cabinet under Section 5 of this administrative regulation.

(7) Lead service line replacement requirements. A system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in Section 6 of this administrative regulation.

(8) Public education requirements. A system exceeding the lead action level shall implement the public education requirements contained in Section 7 of this administrative regulation.

(9) Monitoring and analytical requirements. Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results under the administrative regulation shall be conducted in accordance with Sections 8 to 11 of this administrative regulation.

(10) Reporting requirements. A system shall report to the cabinet any information required by the treatment provisions and Section 12 of this administrative regulation.

(11) Recordkeeping requirements. A system shall maintain records in accordance with Section 13 of this administrative regulation.

(12) Violation of national primary drinking water regulations. Failure to comply with the applicable requirements of this section and Sections 3 to 13 of this administrative regulation shall constitute a violation of the national drinking water regulations for lead and copper. The system shall notify the public pursuant to 401 KAR 8:070 and shall issue the notices required by the administrative regulation.

Section 3. Corrosion Control Treatment Applicability. The following corrosion control treatment steps shall apply to small, medium size, and large water systems:

(1) A system shall complete applicable corrosion control treatment requirements as described in Section 4 of this administrative regulation, by the deadlines established in this section.

(a) A large system, serving more than 50,000 persons, shall complete the corrosion control treatment steps specified in subsection (4) of this section, unless it is deemed to have optimized corrosion control under subsection (2)(b) or (c) of this section.

(b) A small system, serving less than or equal to 3,000 persons, and a medium-size system, serving more than 3,000 and less than 50,000 persons, shall complete the corrosion control treatment steps specified in subsection (6) of this section, unless it is deemed to have optimized corrosion control under subsection (2)(b), (c), or (d) of this section.

(2) A system shall be deemed to have optimized corrosion control and may complete the applicable corrosion control treatment steps identified in this section if the system satisfies one (1) of the criteria specified in paragraphs (a) through (d) of this subsection.

A system deemed to have optimized corrosion control under this subsection, and that has treatment in place, shall continue to operate and maintain optimal corrosion control treatment.

(a) A small or medium-size water system shall be deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two (2) consecutive six (6) month monitoring periods conducted in accordance with Section 8 of this administrative regulation.

(b) A water system may be deemed by the cabinet to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the cabinet that it has conducted activities equivalent to the corrosion control steps applicable to the system under this section.

2. If the cabinet makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with Section 4 of this administrative regulation.

3. A water system deemed to have optimized corrosion control under this paragraph shall:

a. Operate in compliance with the cabinet designated optimal water quality control parameters in accordance with Section 4 of this administrative regulation;

b. Continue to conduct lead and copper tap and water quality parameter sampling in accordance with Sections 8(4)(a) and 8(4)(b) of this administrative regulation, respectively.

4. A system shall provide the cabinet with the following information to support a determination under this paragraph:

a. The results of all test samples collected for each of the water quality parameters in Section 4(3)c of the administrative regulation;

b. A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in Section 4(3)a of this administrative regulation, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

c. A report explaining how corrosion control has been installed and how it is being maintained to ensure minimal lead and copper concentrations at consumers' taps; and

d. The results of tap water samples collected in accordance with Section 8 of this administrative regulation at least once every six (6) months for one (1) year after corrosion control has been installed.

(e) A water system shall be deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with Section 8 of this administrative regulation and source water monitoring conducted in accordance with Section 10 of this administrative regulation that demonstrate for two (2) consecutive six (6) month monitoring periods that the difference between the 90th percentile tap water lead level computed under Section 2(1)(c) of this administrative regulation and the highest corrosion control treatment tap water lead concentration is less than the practical quantitation level for lead specified in Section 11 of this administrative regulation and 40 C.F.R. 141.89 (a)(1)(ii), adopted without change.

1. A system whose highest source water lead level is below the method detection limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the practical quantitation level for two (2) consecutive six (6) month monitoring periods.

2. A water system deemed to have optimized corrosion control in accordance with this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three (3) calendar years using the reduced number of sites specified in Section 8(3) of this administrative regulation and sampling for corrosion control treatment tap water lead concentration in accordance with the sampling requirements specified in Section 8(4)(c) or this administrative regulation.

3. A water system deemed to have optimized corrosion control pursuant to this paragraph shall notify the cabinet in writing pursuant to Section 12(1)(c) of this administrative regulation of a change in treatment or the addition of a new source. The cabinet may require the system to conduct additional monitoring or, upon agreement between the cabinet and the water system, take other action to ensure that the system maintains minimal levels of corrosion in the distribution system.

4. If a system exceeds the copper action level, the system shall not be deemed to have optimized corrosion control under this paragraph and shall implement corrosion control treatment pursuant to subparagraph 6 of this paragraph.

6. A system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in subsection (5) of this section. A large system triggered into corrosion control shall adhere to the schedule specified in subsection (6) of this section for medium-size systems, with the addition that the period for completing each step being triggered by the data the system is no longer deemed to have optimized corrosion control under this paragraph.

(3)(a) Any small or medium-size water system that shall complete the corrosion control steps due to its exceedance of the lead
or copper action level may cease completing the treatment steps if the system meets both action levels during each of two (2) consecutive monitoring periods conducted pursuant to Section 8 of this administrative regulation and submits the results to the cabinet.

(b) If the water system then exceeds the lead or copper action level during any monitoring period, the system shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety.

(c) The cabinet may require a system to repeat treatment steps previously completed by the system if the cabinet determines it necessary to implement properly the treatment requirements of the section. The cabinet shall notify the system in writing of the determination and explain the basis for its decision.

(d) The requirement for a small or medium-size system, including a system deemed to have optimized corrosion control under subsection (2)(a) of this section, to implement corrosion control treatment steps in accordance with subsection (5) of this section shall be triggered if a small or medium-size system exceeds the lead or copper action level.

(e) Treatment steps and deadlines for large systems. Except as provided in subsection (2)(e) and (c) of this section, a large system shall complete the following corrosion control treatment steps described in the referenced portions of Sections 4, 5, 6, and 9 of this administrative regulation, in the indicated time frames.

(a) Step 1: The system shall conduct the initial monitoring required by Sections 8(4)(a) and 9(2) of this administrative regulation during two (2) consecutive six (6) month monitoring periods within the first year of operation or the first year after a change of circumstances as specified in subsection (2)(c) of this section. If the system was in operation as of January 1, 1993, the initial monitoring shall have been conducted by January 1, 1993.

(b) Step 2: The system shall complete the corrosion control studies required by Section 8(3) of this administrative regulation within eighteen (18) months after completing Step 1 in paragraph (e) of this subsection.

(c) Step 3: The cabinet shall approve or designate an optimal corrosion control treatment pursuant to Section 4(4) of this administrative regulation within six (6) months after completing Step 2 in paragraph (b) of this subsection.

(d) Step 4: The system shall install the optimal corrosion control treatment required by Section 4(6) of this administrative regulation within twenty-four (24) months after completing Step 2 in paragraph (a) of this subsection.

(e) Step 5: The cabinet shall complete the follow-up sampling required by Sections 8(4)(b) and 9(3) of this administrative regulation within thirty-six (36) months after the cabinet approves or designates the optimal corrosion control treatment.

(f) Step 6: The cabinet shall review the system's installation of treatment and approve or designate optimal water quality control parameters pursuant to Section 4(6) of this administrative regulation within six (6) months after completion of Step 5 in paragraph (e) of this subsection.

(g) Step 7: The system shall operate in compliance with the optimal water quality control parameters approved or designated by the cabinet pursuant to Section 4(7) of this administrative regulation and continue to conduct tap sampling as required by Sections 8(4)(c) and 9(4) of this administrative regulation.

(5) Treatment steps and deadlines for small and medium-size systems. Except as provided in subsection (2) of this section, a small or medium-size system shall complete the following corrosion control treatment steps described in the referenced portions of Sections 4, 5, 6, and 9 of this administrative regulation by the indicated time periods.

(a) Step 1: The system shall conduct the initial tap sampling required by Sections 8(4)(a) and 9(2) of this administrative regulation until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under Section 8(3)(c) of this administrative regulation. A system exceeding the lead or copper action level shall recommend to the cabinet the optimal corrosion control treatment required by Section 4(4) of this administrative regulation within six (6) months after it exceeds one (1) of the action levels.

(b) Step 2: Within twelve (12) months after a system exceeds the lead or copper action level, the cabinet may require the system to perform the corrosion control studies required by Section 4(2) of this administrative regulation. If the cabinet does not require the system to perform corrosion control studies, the cabinet shall specify optimal corrosion control treatment pursuant to Section 4(4) of this administrative regulation within the following time frames:

1. For a medium-size system, within eighteen (18) months after the system exceeds the lead or copper action level, or
2. For a small system, within twenty-four (24) months after the system exceeds the lead or copper action level.

(c) Step 3: If the cabinet requires a system to perform corrosion control studies pursuant to paragraph (b) of this subsection, the system shall complete the studies required by Section 4(3) of this administrative regulation within eighteen (18) months after the cabinet notifies the system that the studies shall be conducted.

(d) Step 4: If the system has performed corrosion control studies pursuant to paragraph (b) of this subsection, the cabinet shall approve or designate optimal corrosion control treatment pursuant to Section 4(4) of this administrative regulation within six (6) months after completion of Step 3 in paragraph (c) of this subsection.

(e) Step 5: The system shall install the optimal corrosion control treatment required by Section 4(5) of this administrative regulation within twenty-four (24) months after the cabinet approves or designates the treatment.

(f) Step 6: The system shall complete the follow-up sampling required by Sections 8(4)(b) and 9(3) of this administrative regulation within thirty-six (36) months after the cabinet approves or designates the optimal corrosion control treatment.

(g) Step 7: The cabinet shall review the system's installation of treatment and approve or designate optimal water quality control parameters pursuant to Section 4(6) of this administrative regulation within six (6) months after completion of Step 6 in paragraph (f) of this subsection.

(h) Step 8: The system shall operate in compliance with the optimal water quality control parameters approved or designated by the cabinet pursuant to Section 4(7) of this administrative regulation and shall continue to conduct the tap sampling required by Sections 8(4)(c) and 9(4) of this administrative regulation.

Section 4—Deactivation of Corrosion Control Treatment Requirements. Each system shall complete the corrosion control treatment requirements described below which are applicable to the system under Section 3 of this administrative regulation.

(1) System recommendation regarding corrosion control treatment. Based upon the results of lead and copper tap monitoring and water quality parameter monitoring a small or medium-size water system exceeding the lead or copper action level shall recommend installation of treatment or a corrosion control treatment listed in subsection (2)(a) of the section which the system believes constitutes optimal corrosion control for that system. The cabinet may require the system to conduct additional water quality parameter monitoring in accordance with Section 9(2) of this administrative regulation to assist the cabinet in reviewing the system's recommendation.

(2) Cabinet decision to require studies of corrosion control treatment. Applicable to small- and medium-size systems. A small or medium-size system that exceeds the lead or copper action level may be required to perform corrosion control studies under subsection (3) of this section to identify optimal corrosion control treatment for the system.

(3) Performance of corrosion control studies.

(a) Public water systems performing corrosion control studies shall evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the following treatments, to identify the optimal corrosion control treatment for that system:

1. Alkalinity and pH adjustment,
2. Calcium hardness adjustment, and
3. The addition of a phosphate or silicate-based corrosion inhibitor in a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(b) The water system shall evaluate each of the corrosion control treatments using either pipe rig or loop tests, metal coupon
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tests, partial-system tests, or analyses based on documented analogues, treatments with other systems of similar size, water chemistry and distribution system configuration.
(e) The water system shall measure the following water quality parameters in tests conducted under this subsection before and after evaluating the corrosion control treatments listed above:
1. Lead;
2. Copper;
3. pH;
4. Alkalinity;
5. Calcium;
6. Conductivity;
7. Orthophosphate, if an inhibitor containing a phosphate compound is used;
8. Silicate, if an inhibitor containing a silicate compound is used; and
(d) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document the constraints with at least one of each of the following:
1. Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; or
2. Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.
(f) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the cabinet in writing the treatment option that the corrosion control studies indicate correlates to optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (a) through (e) of this subsection.
(4) Cabinet designation or approval of a designated optimal corrosion control treatment.
(a) Based upon consideration of available information including, if applicable, studies performed under subsection (3) of this section and a system’s recommended treatment alternative, the cabinet shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatments from among those listed in subsection (3)(a) of this section. If approving or designating optimal treatment, the cabinet shall consider the effects that additional corrosion control treatments will have on water quality parameters and on other water quality treatment processes.
(b) The cabinet shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for the determination. If the cabinet requests additional relevant information to aid its review, the water system shall provide the information.
(5) Installation of optimal corrosion control. Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment approved by the cabinet in subsection (4) of this section.
(6) Cabinet review of treatment and specification of optimal water-quality control parameters. The cabinet shall evaluate the results of all lead and copper tap samples and water-quality parameter samples submitted by the water system and determine if the system has properly installed and operated the optimal corrosion control treatment approved by the cabinet in subsection (4) of this section.
(a) Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the cabinet shall approve:
1. A minimum value or a range of values for pH measured at each entry point to the distribution system;
2. A minimum pH value, measured in all tap samples. The value shall be equal to or greater than seven and zero tenths (7.0), unless the cabinet determines that meeting a pH level of seven and zero tenths (7.0) is not technologically feasible or is not necessary for the system to optimize corrosion control;
3. If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the cabinet determines is necessary to control corrosion.
(b) The cabinet shall develop values for additional water-quality control parameters that the cabinet determines is necessary to control corrosion, If the cabinet determines additional water-quality control parameters are necessary, the cabinet shall notify the system of the new values for these parameters and explain the basis for its decision.
(7) Continued operation and monitoring.
(a) A system optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the cabinet under subsection (6) of this section, in accordance with this subsection for all samples collected under Section 9(4) to (6) of this administrative regulation.
(b) Compliance with the requirements of this subsection shall be determined every six (6) months, as specified in Section 9(4) of this administrative regulation.
(c) The water system shall be out of compliance with the requirements of this subsection if the system fails to meet any of the water quality parameters at any sampling location for a period of more than one (1) month during the period.
(d) An exclosure shall occur if the daily value for one (1) or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the cabinet.
(e) Daily values shall be calculated as follows, except that the cabinet may deviate results of obvious sampling errors from these calculations.
1. On days when more than one (1) measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day.
2. On days when all measurements for the water quality parameter are collected at the sampling location, the daily value shall be the lowest of all results collected during the day.
(e) On days when no measurement is collected for the water parameter at the sampling location, the daily value shall be the lowest of all results collected during the day on which the water quality parameter was measured at the sampling location.
(f) Modification of cabinet's treatment decision.
(a) Upon its own initiative, or in response to a request by a water system or other interested parties, the cabinet may modify its determination of the optimal corrosion control treatment under subsection (4) of this section or optimal water quality control parameters under subsection (6) of this section.
2. A request for modification by a system or other interested party shall:
   a. Be in writing;
   b. Explain why the modification is appropriate; and
   c. Provide supporting documentation.
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(b) The cabinet may modify its determination if it concludes that change is necessary to ensure that the system continues to optimize corrosion control treatment.

2. A revised determination shall:
   a. Be made in writing;
   b. Set forth the new treatment requirements;
   c. Explain the basis for the cabinet's decision; and
   d. Provide an implementation schedule for completing the treatment modifications.

Section 6. Source-Water-Treatment Requirements. (1) Deadlines for completing source-water treatment steps. A system shall complete the applicable source-water monitoring and treatment requirements, described in the referenced portions of subsection (2) of this section and Sections 5 and 10 of this administrative regulation, by the following deadlines:

(a) Step 1: An exceedance of the lead- or copper-action level shall complete the lead- and copper-source-water monitoring required by Section 10(2) of this administrative regulation and make a treatment recommendation to the cabinet pursuant to subsection (2)(a) of this section within six (6) months after exceeding the lead- or copper-action level.

(b) Step 2: The cabinet shall make a determination regarding source-water treatment as provided by subsection (2)(b) of this section within six (6) months after submission of monitoring results under paragraph (a) of this subsection.

(c) Step 3: If the cabinet requires installation of source-water treatment, the system shall install the treatment required by subsection (2)(c) of this section within twenty-four (24) months after completion of paragraph (b) of this subsection.

(d) Step 4: The system shall complete the follow-up tap-water monitoring required by Section 8(4)(b) of this administrative regulation and the source-water monitoring required by Section 10(3) of this administrative regulation within thirty-six (36) months after completion of paragraph (b) of this subsection.

(e) Step 5: The cabinet shall notify the system of its installation and operational requirements of source-water treatment and specify maximum permissible source-water levels pursuant to subsection (2)(d) of this section within six (6) months after completion of paragraph (d) of this subsection.

(f) Step 6: The system shall operate in compliance with the maximum-permissible lead and copper-source-water levels designated by the cabinet pursuant to subsection (2)(d) of this section and shall continue the source-water-monitoring required by Section 10(4) of this administrative regulation.

(2) Description of source-water treatment requirements:
   (a) A system that exceeds the lead- or copper-action level shall recommend in writing to the cabinet the installation and operation of one (1) of the source-water treatments listed in paragraph (b) of this subsection. The cabinet may require the system to install and operate the source-water treatment that is necessary to minimize lead and copper levels at users' taps.
   (b) The cabinet shall evaluate the results of all source-water samples submitted by the water system to determine if source-water treatment is necessary to minimize lead- or copper-levels in water delivered to users' taps. If the cabinet determines that treatment is needed, the cabinet shall either require installation and operation of the source-water treatment recommended by the system or require the installation and operation of another source-water treatment from among the following: ion exchange, reverse osmosis, lime softening, or coagulation and filtration. If the cabinet requests additional or relevant information to aid in its review, the water system shall provide the information in a way specified by the cabinet in its request. The cabinet shall notify the system in writing of its determination and set forth the basis for its decision.
   (c) Each system shall properly install and operate the source-water treatment designated by the cabinet under paragraph (b) of this subsection.

Section 6. Lead-Service-Line-Replacement Requirements. (1) A system that fails to meet the lead-action level in tap samples taken pursuant to Section 8(4)(b) of this administrative regulation, after installing corrosion control or source-water treatment, whichever sampling is later, shall replace lead-service lines in accordance with the requirements of this section. If a system is in violation of Section 3 or 5 of this administrative regulation with respect to source-water treatment, the cabinet may require the system to replace lead-service lines in accordance with the requirements of this administrative regulation.

(2) A water system shall replace annually at least seven percent of the initial number of lead-service lines in its distribution system. The initial number of lead-service lines shall be the number of lead-service lines in place when the replacement program begins. The system shall notify the cabinet of lead-service lines in its distribution system, including an identification of the portion owned by the system, based on a materials evaluation, including the evaluation required under Section 8(1) of this administrative regulation and any other requirements regarding the portion owned by the system. The first year of lead-service-line replacement shall begin on the date the system was required to conduct monitoring under Section 8(4)(b) of this administrative regulation.

(3) A system may replace an individual-lead-service line if the lead concentration in all service-line samples from that line, taken pursuant to Section 8(2)(c) of this administrative regulation, is less than or equal to 0.015 mg/L.

(4) A water system shall replace that portion of the lead-service line that it owns. If the system does not own the entire lead-service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system shall replace the portion of the service line that it owns. The system shall also offer to replace the owner's portion of the line and shall replace the owner's portion if the owner pays for replacement. A system may bear the cost of replacing the privately owned portion of the line, and may replace the privately owned portion of the line if the owner chooses not to pay the cost of replacing the privately owned portion of the line, or if replacing the privately owned portion would be precluded by estate, local,
or common law. A water system that does not replace the entire length of the service line shall complete the following tasks:

(a) At least forty-five (45) days before beginning with the partial replacement of a lead service line, the water system shall provide notice to the residents of the buildings served by the line, explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers may take to minimize their exposure to lead. The cabinet may allow the water system to provide notice under the previous sentence less than forty-five (45) days before beginning partial lead service line replacement, if the replacement is in conjunction with emergency repairs.

(b) The water system shall inform the residents served by the line that the system shall, at the system's expense, collect a sample from each partially replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed under Section 8(2)(c) of this administrative regulation, within seventy-two (72) hours after the completion of the partial replacement of the service line.

(c) The system shall collect the sample and report the results of the analysis to the owner and the residents served by the line within thirty (30) business days of receipt of results. Notice postmarked within three (3) business days of receiving the results shall be considered to meet this requirement.

(b) The water system shall provide the information required by paragraph (a) of this subsection to the residents of individual dwellings by mail or by other methods approved by the cabinet. If multifamily dwellings are served by the line, the water system may include information about the inauguration of a continuous action plan in the information provided to the residents.

(6) A system shall replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, if a shorter replacement schedule is possible. The system shall make the feasibility determination and not the replacement schedule in writing and notify the system of its findings within six (6) months after the system is triggered. The lead service line replacement schedule is based on monitoring results in subsection (1) of this section.

(7) A system may cease replacing lead service lines if first draw samples collected pursuant to Section 8(2)(b) of this administrative regulation meet the lead action level during each of two (2) consecutive monitoring periods and the system submits the results to the cabinet. If the first draw sample in the water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines pursuant to subsection (2) of this section.

(7) To demonstrate compliance with subsections (1) to (4) of this section, a system shall report to the cabinet the information specified in Section 12(6) of this administrative regulation.

Section 7. Public Education and Supplemental Monitoring Requirements. A water system that exceeds the lead action level, based on tap water samples collected in accordance with Section 8 of this administrative regulation, shall deliver the public education materials contained in subsections (1) and (2) of this section in accordance with the requirements of subsection (3) of this section.

(a) Community water systems. A community water system shall include the text in subparagraphs 1 to 4 of this paragraph in all of the printed materials it distributes through its lead public education program, subject to the exceptions listed in this paragraph. A system may delete information pertaining to lead service lines, upon approval by the cabinet, if no lead service lines exist in the water system's service area. Public education language in subparagraphs 2(v) and (d)(3) of this paragraph may be modified regarding building permit record availability and consumer access to these records, if approved by the cabinet. A system may also continue to use preprinted materials that meet the public education language requirements in this administrative regulation, as in effect July 27, 1994. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

Introduction. The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of fifteen (15) parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law, we are required to have a program in place to minimize lead in your drinking water by [insert data when corrosion control will be completed for your system]. This program includes corrosion-control treatment, service line replacement, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of more than fifteen (15) ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

2. Health effects of lead. Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain, and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells, and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—like dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only lead in their food and their environment.

3. Lead in drinking water.

(a) Lead in drinking water, although rare, the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up twenty (20) percent or more of a person's total lead exposure.

(b) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome-plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service line). In 1986, Congress banned the use of lead solder containing greater than two tenths (0.2) percent lead, and restricted the lead content of faucets, pipes, and other plumbing materials to eight and zero tenths (0.8) percent.

(d) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

4. Stop you can take in the home to reduce exposure to lead in drinking water.

(a) Despite our best efforts mentioned earlier to control water hardness and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call [insert phone number of water system].

(b) If a water test indicates that the drinking water drawn from a tap in your home contains lead above fifteen (15) ppb, then you should take the following precautions:

(c) Test the water run from the tap before using it for drinking or cooking, and any time the water faucet has been unused for more than six (6) hours. The longer water resides in your home's plumbing, the more lead it may contain. Flush the tap means running the cold water faucet until the water gets noticeably colder, usually about fifteen (15) to thirty (30) seconds. If your house has a lead
service line to the water main, you may have to flush the water for a longer time, perhaps one (1) minute, before drinking. Although toilet flushing or showing from a faucet may be done while you are using the toilet, the water in the tank is not fresh. Flushing the tank is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one (1) or two (2) gallons of water and costs less than $1.00 per minute based on flushing the tank two times a day for thirty (30) days per month. To conserve water, fill a couple of bottles for drinking water after flushing the tank, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(ii) Remove loose, lead solder and debris from the plumbing:

(a) Remove the solder from the plumbing in the new house, or in homes in which the plumbing has recently been repaired, by removing the solder fluel by fluel from all service lines and from the water from three (3) to five (5) minutes. Thereafter, permanently remove the fluel and flush out any debris that has accumulated over time.

(b) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the Kentucky Office of Housing, Building and Construction. A licensed plumber can cut off the lead solder and clean or replace it with lead-free solder.

(c) The water system that delivers water to your home should also maintain lead levels in the distribution system. If the service line that connects your dwelling to the water main contributes more than fifteen (15) ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the portion of the line we own. If the line is only partially owned by the district, the name of the city, county, or water system that owns the line should be included in the permit. This will allow you to learn if the privately owned portion of the line can be improved. A licensed plumber should be able to check the service line and offer to replace the portion-of-the-line that is dangerous to your health.

(d) The steps described above will reduce the lead concentration in your drinking water. However, if you notice a change in the drinking water coming from your tap, contact your local water authority.

(iii) Protect the water from lead contamination:

(a) Do not use water for drinking or cooking.

(b) You can consult a variety of sources for additional information. Your family doctor or pediatrician can provide information on the health effects of lead. State and local government agencies that can be contacted include:

(1) The name or city or county department of public utilities

(2) The Kentucky Department of Environmental Protection about the violation.

(c) Nontransient noncommunity water system. A nontransient noncommunity water system shall either include the text specified in paragraphs (a) of the education or shall include the following text in all of the printed materials it distributes through its lead public education program. A water system may delete information pertaining to lead service lines upon approval by the cabinet if no lead service line exists in the water system.

4. Introduction. The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of fifteen (15) parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under federal law, we are required to have a program to eliminate the amount of lead that is contributed to the water by corrosion control will be completed for your system.

This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of more than fifteen (15) ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

2. Health-effects of lead. Lead is found throughout the environment in lead-based paint, air, soil, household dust, food certain types of pottery, porcelain and powdery, and water. Lead causes a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells, and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that are not harmful to adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination. This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

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and toys, and to try to make sure they only put food in their mouths.

3. Lose in drinking water.

a. Lose in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up twenty (20) percent or more of a person's total lead exposure to lead.

b. Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome-plated brass faucets, and in some cases, pipe made of lead that connect houses and buildings to water mains (service lines). In 1986, Congress banned the use of lead-containing solder greater than two-tenths (0.2) percent lead, and restricted the lead content of faucets, pipes, and other plumbing materials to 8.0%.

c. When water stands in lead pipe or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon, or if the water from the tap has not been used all day, can contain fairly high levels of lead.

4. Steps you can take to reduce exposure to lead in drinking water.

a. Let the water run from the tap before using it for drinking or cooking for any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the taps means running the cold water faucet for about fifteen (15) to thirty (30) seconds. Although toilet flushing or churning the water through a portion of the plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

b. Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and then heat it.

c. The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use boiled water for drinking and cooking.

d. You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

- The name and title of the office (if appropriate) at [insert office name and phone number] can provide you with information about your facility's water supply and
- The name and title of the office (if appropriate) at [insert office name and phone number] can provide you with information about your facility's water supply and
- The name and title of the office (if appropriate) at [insert office name and phone number] can provide you with information about your facility's water supply and

5. Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its public education program to television and radio stations for broadcasting:

(a) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for lead-free or $ per example. You can contact the [insert the name of the city or county health department] for information testing and on simple ways to reduce your exposure to lead in drinking water.

(b) To have your water tested for lead, or to get more information about this public health concern, please call [insert the phone number of the city or water system].

(3) Delivery of a public education program:

(a) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language.

(b) A community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with Section 8 of this administrative regulation and that is not already repeating public education tasks pursuant to paragraph (c), (d), or (h) of this subsection shall, within sixty (60) days of exceeding the action level:

1. Insert notices in the consumer's water utility billing containing the information in subsection (1)(a) of this section, along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

b. A community water system having a billing cycle that does not include a billing within sixty (60) days of exceeding the action level, or that is not able to insert information in the consumer's utility bill without making major changes to its billing system, may use a separate mailing to deliver the information in subsection (1)(a) of this section, if the information is delivered to each consumer within sixty (60) days of exceeding the action level. The water system shall also include the "alert" language specified in clause a of the subparagraph.

2. Submit the information in subsection (1)(a) of this section to the sectional departments of the major daily and weekly newspapers circulated throughout the community.

3. Deliver pamphlets or brochures that contain the public education materials in subsection (1)(a) and (d) of this section to facilities and organizations, including the following:

- Public schools or school boards;
- City or county health department;
- Women's, infants', and children's feeding programs whenever available;
- Public and private hospitals and clinics;
- Hospitals;
- Family planning clinics; and
- Local welfare agencies.

4. Submit the public service announcement in subsection (2) of this section to at least five (5) of the radio and television stations with the largest audience in the community served by the water system.

(c) A community water system shall repeat the tasks contained in paragraph (b) of this subsection every twelve (12) months, and the tasks contained in paragraph (b) of this subsection every six (6) months for as long as the system exceeds the lead action level.

(d) Within sixty (60) days after it exceeds the lead action level, unless it already is repeating public education tasks pursuant to paragraph (c) of this subsection, a nontransient noncommunity water system shall deliver public education materials specified by subsection (1)(a) of this section or the public education materials specified by subsection (1)(b) of this section as follows:

1. Post informational posters on lead and drinking water in a public place or common area in each of the buildings served by the system and

2. Distribute informational pamphlets or brochures on lead and drinking water to each person served by the nontransient noncommunity water system. The system may use electronic transmittal instead of or combined with printed materials, if it achieves at least the same coverage.

(e) A nontransient noncommunity water system shall repeat the tasks contained in paragraph (c) of this subsection at least once during each calendar year in which the system exceeds the lead action level.

(f) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six (6) month monitoring period conducted pursuant to Section 8 of this administrative regulation. The system shall re-commence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(g) A community water system may apply to the cabinet, in writing, to use the text specified in subsection (1)(b) of this section instead of the text in subsection (1)(a) of this section and to per-
form the tasks listed in paragraphs (d) and (o) of the subsection instead of the tasks in paragraphs (h) and (o) of this subsection if:
1. The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and
2. The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(h) A community water system that serves 2,000- or fewer people may omit the task contained in paragraph (b) of this subsection. If it distributes notice containing the information contained in subsection (1)(e) of this section to every household served by the system, the system may further limit its public education program as follows:

1. A system that serves 500- or fewer people may forego the task contained in paragraph (b)(2) of this subsection. The system may limit the distribution of the public education material required under paragraph (b)(3) of this subsection to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children, unless it is notified by the cabinet in writing that it shall make a broader distribution.

(i) The approvals for Tier 3 sampling sites - a community water system that serves 2,000- or fewer people may omit the tasks in paragraph (b)(2) of this subsection or limit the distribution of the public education material required under paragraph (b)(3) of this subsection to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

2. A community water system that serves 3,000- or fewer people that distributes the information in accordance with Section 8 of this administrative rule may elect to do so. The system may elect to omit or modify the task contained in paragraph (b)(1) of this subsection that shall be completed each year. Each system that elects to omit the task contained in paragraph (b)(1) of this subsection shall repeat the required public education tasks at least once during each calendar year in which the system exceeds the lead action level.

(4) Supplemental monitoring and notification of results: A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with Section 8 of this administrative regulation or fails to comply have sampled the tap water of any customer who requests it. The system may pay for collecting or analyzing the sample, and the system may collect and analyze the sample itself.

Section 9 - Monitoring Requirements for Lead- and Copper in Tap Water. (f) Sample site location.

(a) By the applicable date for commonwealth of monitoring under subsection (1)(c) of this section, each water system shall complete a materials evaluation of its distribution system to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficient large to ensure that the water system is able to collect the number of lead and copper tap samples required in subsection (3)(c) of this section. All sites from which first draw tap samples are collected shall be collected from the pool of targeted sampling sites. A sampling site shall not include fountains that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(b) A water system shall use the information on lead, copper, and galvanized steel that it shall collect under 401 KAR 8:360, Section 1-4, conducting a materials evaluation. If an evaluation of the information collected pursuant to 401 KAR 8:360 is insufficient to locate the requisite number of lead- and copper-sampling sites that meet the targeting criteria in this subsection, the water system shall review the sources of information listed in subparagraph 1 through 3 of this paragraph below to identify a sufficient number of sampling sites. In addition, the system shall seek to collect the information listed in subparagraphs 1 through 3 of this paragraph if possible in the course of its normal operations, for instance, checking service lines materials when reading water meters or performing maintenance activities.

- All plumbing codes, permits, and records in the files of the building department which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system.
- All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and
- All existing water-quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(2) Tier 1 sampling sites:
1. The sampling sites selected for a community water system's sampling pool, "Tier 1 sampling sites," shall consist of single-family structures that:
   - Contain copper pipes with lead solder installed after 1982 or contain lead pipes;
   - Are served by a lead service line.
2. If multiple family residences comprise at least twenty (20) percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(3) Tier 2 sampling sites:
1. A community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with Tier 2 sampling sites, consisting of buildings, including multiple-family residences that:
   - Contain copper pipes with lead solder installed after 1982 or contain lead pipes;
   - Are served by a lead service line.

(4) Tier 3 sampling sites:
1. A community water system with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. For the purpose of this subparagraph, a representative site shall be a site in which the plumbing material used at that site would be commonly found at other sites served by the water system.

(f) The Tier 1 sampling sites selected for a nontransient noncommunity water system shall consist of buildings that:
1. Contain copper pipe with lead solder installed after 1982 or contain lead pipe;
2. Are served by a lead service line.

(g) A nontransient noncommunity water system with insufficient Tier 1 sites that meet the targeting criteria in paragraph (f) of this subsection shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983.

(h) If additional sites are needed to complete the sampling pool, the nontransient noncommunity water system shall use representative sites throughout the distribution system. For the purpose of this subparagraph, a representative site shall be a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(i) A water system whose distribution system contains lead- and copper-bearing materials shall be sampled from the pool of targeted sampling sites during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and fifty (50) percent of the samples from sites served by a lead service line. A water system that is not able to identify a sufficient number of sampling sites by lead service line shall collect first draw samples from all of the sites identified as being served by the line.

Sample collection methods:
(a) All tap samples for lead and copper collected in accordance with this administrative regulation, with the exception of lead service line samples collected under Section 6(2) of the administrative regulation and samples collected under paragraph (e) of this subsection shall be first draw samples.

(b) Each first draw tap sample for lead- and copper shall be one (1) liter in volume and shall have stood — molarise — in the plumbing system of each sampling site for at least six (6) hours.

(c) A first draw sample from a residential housing shall be collected from the cold water kitchen tap or bathroom sink tap.

(d) A first draw sample from a nonresidential building shall be one (1) liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption.

(e) A nonfirst draw sample collected instead of a first draw sample pursuant to paragraph (e) of this subsection shall be one (1) liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption.

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6. A first-draw sample may be collected by the system or the system may allow residents to collect a first-draw sample after instructing the residents of the sampling procedures specified in this paragraph.

7. Identification of a first-draw sample may be done up to fourteen (14) days after the sample is collected. After identification, the sample shall stand in the original container for an additional time specified by the approved EPA method prior to the sample being analyzed.

8. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(c) Each service line sample shall be one (1) liter in volume and shall have stood motionless in the lead service line for at least six (6) hours. A lead-service line sample shall be collected in one (1) of the following three (3) ways:

1. At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

2. Tapping directly into the lead service line, or

3. The sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(d) A water system shall collect each first-draw tap sample from the same sampling site from which it collected a previous sample. If the water system is not able to gain entry to a sampling site, it may collect a follow-up tap sample. The system may collect the follow-up tap sample from another sampling site in its sampling pool if the new site meets the same targeting criteria and is within reasonable proximity of the original site.

(e) A nontransient noncommunity water system, or a community water system that meets the criteria of Section 736(g) of this administrative regulation, that does not have enough taps that are able to be supplied by first-draw samples may apply to the commission in writing to substitute nonfirst-draw samples. These systems shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites.

3. Number of samples. A water system shall collect at least one (1) sample during each monitoring period specified in subsection (4) of this section from the number of sites specified in the column of the lead table in the subsection headed "standard monitoring." A system conducting reduced-monitoring under subsection (4)(d) of this section shall collect at least one (1) sample from the number of sites specified in the column of the table in the subsection headed "reduced-monitoring." A system conducting reduced-monitoring under subsection (4)(d) of this section is required to conduct a follow-up tap sample if the system has not collected the sampling site in its sampling pool.

4. Timing of sampling.

(a) Initial sampling. The first six (6) month monitoring period for small, medium-size and large systems shall have begun by the following dates:

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th># of sites (Standard Monitoring)</th>
</tr>
</thead>
<tbody>
<tr>
<td>greater than 100,000</td>
<td>100</td>
</tr>
<tr>
<td>40,001 to 100,000</td>
<td>60</td>
</tr>
<tr>
<td>2,001 to 40,000</td>
<td>40</td>
</tr>
<tr>
<td>601 to 2,000</td>
<td>20</td>
</tr>
<tr>
<td>101 to 600</td>
<td>10</td>
</tr>
<tr>
<td>less than or equal to 100</td>
<td>5</td>
</tr>
</tbody>
</table>

(b) Timing of monitoring.

5. Timing of sampling. The first six (6) month monitoring period for small, medium-size and large systems shall have begun by the following dates:

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th>First Six (6) Month Monitoring Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>greater than 60,000</td>
<td>January 1, 1992</td>
</tr>
<tr>
<td>3,001 to 50,000</td>
<td>July 1, 1992</td>
</tr>
<tr>
<td>less than or equal to 3,000</td>
<td>July 1, 1993</td>
</tr>
</tbody>
</table>
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b. The cabinet shall review, and if appropriate, revise its determination if the system submits new monitoring or treatment data, or if other data relevant to the number and frequency of tap sampling becomes available.

4. A water system that reduces the number and frequency of sampling shall collect the samples from representative sites included in the pool of targeted sampling sites identified in subsection 4(a) of this section. A system sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August, or September unless the cabinet has approved a different sampling period in accordance with clause a of this subparagraph.

(i) The cabinet may approve a different period for conducting the lead and copper tap sampling for a system collecting a reduced number of samples. The reduced period shall be no longer than four (4) consecutive months and shall represent a time of normal operation when the highest levels of lead are most likely to occur.

(ii) For a nontransient noncommunity water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the cabinet shall designate a period that represents a time of normal operation for the system.

5. A system monitoring annually that has been collecting samples during the months of June through September and that receives cabinet approval to alter its sample collection period under clause a of this subparagraph shall collect its next round of samples during a time period that ends no later than twenty-one (21) months after the previous round of sampling.

6. Subsequent rounds of sampling shall be collected annually or less frequently, as required by this section, only by a system that has been collecting samples during the months of June through September, and receives state approval from the cabinet to alter the sampling collection period pursuant to clause a of this subparagraph, shall collect its next round of samples during a time period that ends no later than forty-five (45) months after the previous round of sampling.

7. A water system subject to a reduced monitoring frequency under this paragraph that either adds a new source of water or changes a water treatment shall inform the cabinet in writing in accordance with Section 12(1)(c) of this administrative regulation. The cabinet may require the system to resume sampling in accordance with this paragraph and collect the number of samples specified for standard monitoring under subsection 3 of this section or take other appropriate steps such as increased water quality parameter monitoring or reevaluation of its corrosion control treatment given the potentially different water quality considerations.

8. Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the cabinet in making any determinations, for instance, calculating the 90th percentile load or copper level, under this administrative regulation.

9. Inactivation of lead or copper tap water samples. A sample invalidated under this subsection shall not count toward determining lead or copper 90th percentile levels under Section 5(c) of this administrative regulation. The cabinet may require the system to collect additional samples to meet the minimum monitoring requirements of subsection 3 of this section.

(a) The cabinet may invalidate a lead or copper tap water sample if at least one (1) of the following conditions is met:

1. The laboratory established that improper sample analysis caused erroneous results.

2. The cabinet determines that the sample was taken from a site that did not meet the site selection criteria of this section.

3. The sample container was damaged in transit; or

4. Thoro is substantial evidence to believe that the sample was subject to contamination.

(b) The system shall report the results of all samples to the cabinet and all supporting documentation for samples the system believes should be invalidated.

(c) If a sample under paragraph (a) of this subsection, the decision and the rationale for the decision shall be documented in writing. The cabinet shall not invalid a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(d) The system shall collect replacement samples for a sample invalidated under this section. If, after the invalidation of one (1) or more samples, the system has too few samples to meet the minimum requirements of subsection 3 of this section. The replacement sample shall be taken as soon as possible, but no later
than twenty (20) days after the date the cabinet invalidates the sample, or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not be used to meet the monitoring requirements of a subsequent monitoring period. The replacement sample shall be taken at the same location as the invalidated sample, or, if that is not possible, at a location other than that already used for sampling during the monitoring period.

1. A system with a full waiver shall conduct tap-water monitoring for lead and copper under this section to once every nine (9) years, or a "full waiver," if it meets all of the materials criteria specified in paragraph (a) if the subsection and all of the monitoring criteria specified in paragraph (b) of this subsection. A small system that meets the criteria of this subsection may apply to the cabinet to reduce the frequency of monitoring for lead and copper under this section to once every nine (9) years, or a "full waiver," if it meets all of the materials criteria specified in paragraph (a) if the subsection and all of the monitoring criteria specified in paragraph (b) of this subsection. A small system that meets the criteria of this subsection may apply to the cabinet to reduce the frequency of tap water monitoring to once every nine (9) years for that contaminant only, or a "partial" waiver.

(e) Materials criteria. The system shall demonstrate that its distribution system and service lines and all drinking-water supply plumbing, including plumbing-conveying drinking-water lines, all service connections to individual service lines, and all equipment and buildings connected to the system are free of lead-containing materials or copper-containing materials, as those items are used in this paragraph, as follows:

1. Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead, or a "lead waiver," the water system shall provide certification and supporting documentation to the cabinet that the system is free of lead-containing material, as follows:

   a. It contains no plastic pipe or any lead-plasticizer, or plastic service lines that contain lead plasticizer; and

   b. It contains lead service line, lead pipe, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless the fittings and fixtures meet the specifications of a standard established by consensus of U.S.C. 3055.

2. Copper. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for copper, or a "copper waiver," the water system shall provide certification and supporting documentation to the cabinet that the system contains no copper pipes or copper service lines.

(b) Monitoring criteria for waiver issuance. The system shall have completed at least one (1) six (6) month round of testing and tap-water monitoring for lead and copper at sites approved by the cabinet and from the number of sites required by subsection (3) of this section and demonstrate that the 90th percentile levels for the round of monitoring conducted since the system became free of all lead-containing or copper-containing materials, as appropriate, meet the following criteria:

1. Lead. To qualify for a full waiver or a lead waiver, the system shall demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

2. Copper. To qualify for a full waiver or a copper waiver, the system shall demonstrate that the 90th percentile copper level does not exceed 0.65 mg/L.

(c) Cabinet approval of waiver application. The cabinet shall notify the system of its waiver determination, in writing, setting forth the basis of its decision and any condition of the waiver. As a condition of the waiver, the cabinet may require the system to perform specific activities to avoid the risk of lead or copper contamination of concern in tap water. Specific activities shall be limited monitoring or periodic outreach to customers to remind them to avoid installation of materials that might void the waiver, or other activities documented by the system to support its waiver request. The small system shall continue monitoring for lead and copper at the tap as required by subsection (3)(a) to (d) of this section, as appropriate, until it receives written notification from the cabinet that the waiver has been approved.

(d) Monitoring frequency systems with waivers.

1. A system with a full waiver shall conduct tap-water monitoring for lead and copper in accordance with subsection (4)(d)(4) of this section at the reduced number of sampling sites identified in subsection (3) of this section at least once every nine (9) years and provide the materials certification specified in paragraph (a) of this subsection for both lead and copper to the cabinet along with the monitoring results.

2. A system with a partial or full waiver adds a new source of water or changes a water treatment, the system shall notify the cabinet in writing in accordance with Section 12-171(e) of this administrative regulation. The cabinet may require the system to add or modify waiver conditions, for example, require re-certification that the system is free of lead containing or copper containing materials or require additional rounds of monitoring. If the modifications are necessary to address treatment or source water changes at the system.

3. A system with a full or partial waiver becomes aware that it is no longer free of lead containing or copper containing materials, as appropriate, for example as a result of new construction or repairs, the system shall notify the cabinet in writing no later than sixty (60) days after becoming aware of the change.

(c) Continued eligibility. If the system continues to satisfy the requirements of paragraph (d) of this subsection, the waiver shall be renewed annually, unless any of the conditions listed in subparagraphs (a) to (e) of this paragraph occur. A system whose waiver has been revoked may reapply for a waiver when it again meets the appropriate materials and monitoring criteria of paragraphs (a) and (b) of this subsection. A waiver shall not be renewed automatically if:

1. A system with a full waiver or a lead waiver no longer satisfies the materials criteria of paragraph (a) of this subsection or has a 90th percentile lead level greater than 0.005 mg/L.

2. A system with a full waiver or a copper waiver no longer satisfies the materials criteria of paragraph (a) of this subsection or has a 90th percentile copper level greater than 0.65 mg/L.

3. The cabinet notifies the system, in writing, that the waiver has been revoked, setting forth the basis of its decision.

(f) Requirements following waiver revocation. A system whose full or partial waiver has been revoked by the cabinet shall be subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

1. If the system exceeds the lead or copper action level, the system shall implement corrosion control treatment in accordance with the requirements specified in Section 3(5) of this administrative regulation, and any other applicable requirements of Sections 2 through 12 of this administrative regulation.

2. If the system meets both the lead and copper action levels, the system shall monitor for lead and copper at the tap no less frequently than once every three (3) years, using the reduced number of sample sites specified in subsection (3) of this section.

Section 0. Monitoring Water Quality Parameters. A large water system or a small or medium size system that exceeds the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section.

1. General requirements.

2. Sample collection methods.

3. Tap samples shall be representative of water quality throughout the distribution system taking into account the number of customers served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section may be conducted at taps other than those targeted for lead and copper sampling under Section 8(1) of this administrative regulation.

4. Samples collected at the entry points to the distribution system shall be taken from locations representative of each source after treatment. If a system draws water from more than one (1) source and the sources are combined before distribution, the system shall sample at an entry point to the distribution system during periods of...
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normal operating conditions, i.e., when water is representative of all sources being used.

(b) Number of samples.

1. A system shall collect two (2) tap samples for applicable water-quality parameters during each monitoring period specified in subsection (2) of this section. During each monitoring period specified in subsections (3) to (5) of this section, a system shall collect one (1) sample for each applicable water-quality parameter at each entry point to the distribution system.

2. Except as provided in subsection (3) of this section, a system shall collect two (2) samples for each applicable water-quality parameter at each entry point to the distribution system during each monitoring period specified in subsection (2) of this section. During each monitoring period specified in subsections (3) to (5) of this section, a system shall collect one (1) sample for each applicable water-quality parameter at each entry point to the distribution system.

(c) A ground water system may limit entry-point sampling described in paragraph (b) of this subsection to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water source mixes with water from treated ground water source, the system shall monitor for water-quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Before the start of monitoring under this paragraph, the system shall provide to the cabinet written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(d) Monitoring after water quality parameter values for optimal corrosion control are specified. After the cabinet specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under Section 4(6) of this administrative regulation, a large system shall measure the applicable water quality parameters in accordance with subsection (2) of this section and determine compliance with the requirements of Section 4(7) of this administrative regulation every six (6) months with the first six (6)-month period beginning on the date the cabinet specifies the values. Values under Section 4(6) of this administrative regulation. A small or medium-size system shall conduct the monitoring during each six (6)-month period specified in this paragraph in which the system exceeds the lead or copper action level. Applicable water quality parameters shall be:

(a) pH;

(b) Alkalinity;

(c) Orthophosphate, if an inhibitor containing a phosphate compound is used;

(d) Silica, if an inhibitor containing a silicate compound is used;

(e) Calcium;

(f) Conductivity; and

(g) Water temperature.

(2) Monitoring after installation of corrosion control. A large system that installs optimal corrosion control treatment pursuant to Section 4(4)(a) of this administrative regulation shall measure the water quality parameters at the locations and frequencies specified in paragraphs (a) through (e) of the subsection below during each six (6)-month monitoring period specified in Section 8(4)(a) of this administrative regulation. A small or medium-size system that installs optimal corrosion control treatment shall conduct the monitoring during each six (6)-month monitoring period specified in Section 8(4)(b) of this administrative regulation in which the system exceeds the lead or copper action level.

(a) At taps; two (2) samples for:

1. pH;

2. Alkalinity;

3. Orthophosphate, if an inhibitor containing a phosphate compound is used;

4. Silica, if an inhibitor containing a silicate compound is used; and

5. Calcium, if calcium carbonate stabilization is used as a part of corrosion control.

(b) Except as provided in paragraph (c) of this subsection, at each entry point to the distribution system, at least one (1) sample per less frequently than every two (2) weeks for:

1. pH;

2. If alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

3. If a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica, whichever is applicable.

(b) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two (2) consecutive six (6)-month monitoring periods under subsection (4) of this section shall continue monitoring at the entry points to the distribution system as specified in subsection (3)(d) of this section. The system may collect two (2) tap samples for applicable water-quality parameters from the following reduced number of sites during each six (6)-month monitoring period:

<table>
<thead>
<tr>
<th>System Size</th>
<th>Reduced # of Sites for Water Quality Parameters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 100,000</td>
<td>10</td>
</tr>
<tr>
<td>10,001 to 100,000</td>
<td>10</td>
</tr>
<tr>
<td>2,001 to 10,000</td>
<td>3</td>
</tr>
<tr>
<td>501 to 2,000</td>
<td>2</td>
</tr>
<tr>
<td>101 to 500</td>
<td>1</td>
</tr>
<tr>
<td>Less than or equal to 100</td>
<td>1</td>
</tr>
</tbody>
</table>
a. Its tap-water load level at the 90th percentile is less than or equal to the practical quantitation limit for lead specified in Section 311 of this administrative regulation;

b. Its tap-water copper level at the 90th percentile is less than or equal to 0.05 mg/L for copper in Section 214(b)(1) of this administrative regulation; and

c. It also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 406 of this administrative regulation.

(e) A water system that conducts sampling annually shall collect those samples evenly throughout the year to reflect seasonal variability.

(f) A water system subjected to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the cabinet under Section 406 of this administrative regulation for more than nine (9) days in a six (6) month period specified in Section 417 of this administrative regulation shall resume distribution system tap water sampling in accordance with the number and frequency requirements in subsection (4) of this section.

2. The system may resume:

a. Annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (a) of this subsection after it has completed two (2) subsequent consecutive six (6)-month rounds of monitoring that meet the criteria of that paragraph;

b. Triennial monitoring for water quality parameters at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraphs (b)(1) or (2) of this subsection.

(c) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of the section shall be considered by the system and the cabinet in making any determinations, for example, determining concentrations of water quality parameters, under this section or Section 414 of this administrative regulation.

Section 10. Monitoring Requirements for Lead and Copper in Source Water.

(a) Sample location, collection methods, and number of samples.

The water system that fails to meet the lead or copper action level on the basis of tap water samples collected in accordance with Section 8 of this administrative regulation shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

1. A ground water system shall take a minimum of one (1) sample at every entry point to the distribution system that is representative of each well after treatment, called a "sampling point." The system shall take one (1) sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

2. A surface water system shall take a minimum of one (1) sample at every entry point to the distribution system after an application of treatment or in the distribution system at a point that is representative of each source after treatment, called a "sampling point." The system shall take one (1) sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For the purposes of this subparagraph, a surface water system shall include a system with a combination of surface and ground sources.

3. If a system draws water from more than one (1) source and the sources are combined before distribution, the system shall take one (1) sample at every entry point to the distribution system during periods of normal operating conditions, for example, when water is representative of all sources being used.

4. Compositing may be used to reduce the total number of samples that shall be analyzed. Compositing of samples shall be done by certified laboratory personnel. Composites samples from a maximum of five (5) samples are allowed. If the lead concentration in the composite sample is greater than or equal to 0.001 mg/L or the copper concentration is greater than or equal to 0.160 mg/L, then either:

   a. A follow-up sample shall be taken and analyzed within fourteen (14) days at each sampling point included in the composite; or

   b. The composite contains equal or less than the amount of lead and copper as the original sample or the concentration of lead and copper in the composite sample is less than or equal to 0.001 mg/L or the copper concentration is less than or equal to 0.160 mg/L.

5. The sampling frequency after the system exceeds tap water action level. A system that exceeds the lead or copper action level at the tap shall collect one (1) source water sample from each entry point to the distribution system within six (6) months after the exceedance.

6. Monitoring frequency after installation of source water treatment. A system that installs source water treatment pursuant to Section 500 of this administrative regulation shall collect an additional source water sample from each entry point to the distribution system during two (2) consecutive six (6)-month monitoring periods after the deadline specified in Section 500 of this administrative regulation.

7. Monitoring frequency after maximum permissible source water levels are specified by the cabinet or the system determines that source water treatment is not needed.

(c) A system shall monitor at the frequency specified below, if the system specifies maximum permissible source water levels under Section 500 of this administrative regulation or determines that the system is not required to install source water treatment under Section 500 of this administrative regulation.

1. A water system using only groundwater shall collect samples once during the three (3) year compliance period in which the applicable cabinet determined under this paragraph is made. The system shall collect samples once during each subsequent compliance period.

2. A water system using surface water, or a combination of surface and groundwater, shall collect samples once during each year. The first annual monitoring period shall begin on the date on which the applicable determination is made under this paragraph.

(b) A system may conduct source water sampling for lead or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (a) of this subsection.

(5) Reduced monitoring frequency.

(a) A water system using only groundwater may reduce the monitoring frequency for lead and copper in source water to once during each nine (9) year compliance cycle if the system meets one (1) of the following criteria:

1. The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the cabinet in Sections 406 of this administrative regulation during at least three (3) consecutive compliance periods under subsection (4)(a) of this section.

2. The cabinet has determined that source water treatment is not needed and the system demonstrates that, during at least the three (3) consecutive compliance periods in which sampling was conducted under subsection (4)(a) of this section, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.05 mg/L.

(b) A water system using surface water, or a combination of surface and groundwater, may reduce the monitoring frequency in subsection (4)(a) of this section to once during each nine year compliance period. The system shall comply with the requirements of Section 500 of this administrative regulation.
(9) Year—compliance cycle if the system meets one (1) of the following criteria:
1. The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the cabinet in Section 8(5)(c) of this administrative regulation for at least three (3) consecutive years.
2. The cabinet has determined that source water treatment is not needed and the system demonstrates that, during at least three (3) consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L, and the concentration of copper in source water was less than or equal to 0.05 mg/L.
3. A water system that uses a new source of water shall not be eligible for reduced monitoring for lead or copper until concentrations in samples collected from the new source during three (3) consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the cabinet in Section 8(5)(c) of this administrative regulation.

Section 11. Analytical Methods. Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, iron, and temperature shall be conducted in accordance with 40 C.F.R. 141.22(d) and 141.60, in effect on July 1, 2003, adopted without change in Section 14 of this administrative regulation.

Section 12. Reporting Requirements. A water system shall report the following information to the cabinet in accordance with this section.

(a) Reporting Requirements for Tap Water Monitoring for Lead and Copper and for Water Quality Parameter Monitoring.
1. Except as provided in subparagraph 7 of this paragraph, a water system shall report the information specified below for all tap water samples collected in Section 8 of this administrative regulation and for the water quality parameter samples specified in Section 9 of this administrative regulation within the first ten (10) days following the end of the monitoring period, calculated in accordance with Section 2(4)(c) of this administrative regulation:
   (a) With the exception of the first round of source water sampling conducted pursuant to Section 8(5)(b) of this administrative regulation, the system shall designate any site which was not sampled during the previous monitoring period, and include an explanation of why sampling sites have changed.
   (b) The results of all tap samples for lead and copper including the location of each site and the criteria under Section 8(1)(c), (d), (e), (f), and (g) of this administrative regulation under which the site was selected for the system’s sampling pool.
   (c) The results of all tap samples for copper and/or lead with which the water system requests invalidation pursuant to Section 8(5)(d) of this administrative regulation.
   (d) The 90th percentile lead and copper concentrations measured from all lead and copper tap water samples collected during each monitoring period, calculated in accordance with Section 2(4)(c) of this administrative regulation.
   (e) For systems with tap water systems monitored for multiple contaminants, the results of initial tap water sampling conducted pursuant to Section 8(5)(b) of this administrative regulation, the system shall designate any site which was not sampled during the previous monitoring period, and include an explanation of why sampling sites have changed.
   (f) The results of all tap samples for pH, and if applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under Section 2(3) to (5) of this administrative regulation.
   (g) The results of all tap samples for lead and copper including the location of each site and the criteria under Section 8(1)(c), (d), (e), (f), and (g) of this administrative regulation under which the site was selected for the system’s sampling pool.

(b) For a nontransient noncommunity water system, or a community water system that meets the criteria of Section 7(2)(a) of this administrative regulation, that does not have enough time to prepare and draw samples, the system shall provide written documentation to the cabinet identifying standing times and locations for enough non-first draw samples to make up its sampling pool under Section 8(2)(e) of this administrative regulation by the start of the first applicable monitoring period under Section 8(4) of this administrative regulation that begins after April 11, 2000.
(c) No later than sixty (60) days after the addition of a new source or a change in water treatment, unless earlier notification is required by 401 KAR 8.100, a water system that has been deemed to have optimized corrosion control under Section 3(2)(c) of this administrative regulation, a water system subject to reduced monitoring pursuant to Section 8(5)(d) of this administrative regulation, or a water system subject to a monitoring waiver pursuant to Section 8(7) of this administrative regulation, shall send written documentation to the cabinet describing the change.
(d) Small systems applying for a monitoring waiver under Section 8(7) of this administrative regulation, or subject to a waiver granted pursuant to Section 8(7)(b) of this administrative regulation, shall provide the following information to the cabinet in writing by the specified deadline:
1. By the start of the first applicable monitoring period in Section 8(4) of this administrative regulation, a small water system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of Section 8(7)(a) and (b) of this administrative regulation.
2. By the start of the first monitoring previously conducted pursuant to Section 8(7)(b) or (d) of this administrative regulation, a small system desiring to maintain its monitoring waiver shall provide the information required by Section 8(7)(d) and 2 of this administrative regulation.
3. No later than sixty (60) days after it becomes aware that it is the owner or operator of a new lead containing or copper containing material, or any other material that is capable of releasing lead or copper into the system, the small system shall provide written notification to the cabinet, setting forth the circumstances resulting in the lead containing or copper containing material being introduced into the system and what corrective action, if any, the system plans to take to remove those materials.
(e) A ground water system that limits water quality parameter monitoring to a subset of entry points under Section 8(3)(c) of the administrative regulation, by providing written notification to the cabinet, setting forth the circumstances for the monitoring, written correspondence to the cabinet that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

Section 13. Source Water Monitoring Reporting Requirements.
(a) A water system shall submit to the cabinet the sampling results for all source water samples collected in accordance with Section 10 of this administrative regulation within the first ten (10) days following the end of each source water monitoring period, calculated in accordance with Section 2(4)(c) of this administrative regulation.
(b) With the exception of the first round of source water sampling conducted pursuant to Section 10(2)(c) of this administrative regulation, the system shall designate any site which was not sampled during the previous monitoring period, and include an explanation of why the sampling point has changed.
(c) Corrosion-control treatment reporting requirements. By the applicable dates under Section 3 of this administrative regulation, a system shall submit the following information to the cabinet:
   (a) For a system demonstrating that it has already optimized corrosion control, information required in Section 3(2)(a) and (c) of this administrative regulation.
   (b) For a system required to optimize corrosion control, its recommendation regarding optimal corrosion treatment under Section 4(1) of this administrative regulation.
   (c) For a system required to evaluate the effectiveness of corrosion-control treatments under Section 4(3) of this administrative regulation, the information required by that subsection.
   (d) Corrosion-control treatment approval. By the cabinet under Section 4(4) of this administrative regulation, a letter certifying that the system has completed installing that treatment.

(4) Source water treatment reporting requirements. By the applicable dates in Section 6 of this administrative regulation, a system shall submit the following information to the cabinet:
   (a) If required under Section 6(2)(a) of this administrative regulation, its recommendation regarding source water treatment; and
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(b) For a system required to install source water treatment under Section 5(2)(b) of this administrative regulation, a letter certifying that the system has completed installing the treatment approved or designated by the cabinet within twenty-four (24) months after the cabinet approves or designates the treatment.

(5) Lead-service-line replacement-reporting requirements. A system shall report the following information to the cabinet to demonstrate compliance with the requirements of Section 6 of this administrative regulation:

(a) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 6(1) of this administrative regulation, the system shall demonstrate in writing to the cabinet that it has conducted a materials evaluation, including the evaluation in Section 6(1) of this administrative regulation, to identify the initial number of lead service lines in its distribution system, and shall provide the cabinet with the system's schedule for replacing annually at least seven (7) percent of the initial number of lead service lines in its distribution system.

(b) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 6(1) of this administrative regulation, and every twelve (12) months thereafter, the system shall demonstrate to the cabinet in writing that the system has either:

1. Replaced in the previous twelve (12) months at least seven (7) percent of the initial lead service lines, or a greater number of lines specified by the cabinet pursuant to Section 6(6) of this administrative regulation, in its distribution system; or

2. Conducted sampling which demonstrates that the lead concentration in all service lines from an individual line, taken pursuant to Section 6(4)(e) of the administrative regulation, is less than or equal to 0.1 mg/L. If so, the total number of lines replaced or which meet the criteria in Section 6(3) of this administrative regulation shall equal at least seven (7) percent of the initial number of lead lines identified under subsection (1) of this section, or the percentage specified by the cabinet pursuant to Section 6(6) of this administrative regulation.

(c) The annual letter submitted to the cabinet under paragraph (b) of this subsection shall contain the following information:

1. The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

2. The number and location of each lead service line replaced during the previous year of the system's replacement schedule; and

3. If measured, the water-lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(d) A system that collects lead-service-line samples following partial lead-service-line replacement required by Section 6 of this administrative regulation shall report the results to the cabinet within the ten (10)-day period following the month in which the system receives the laboratory results. The cabinet may eliminate this reporting requirement for a system if the cabinet determines that the results are not necessary to protect public health. A system shall also report additional information to verify that all partial lead-service-line replacement activities have taken place.

(e) Public-education-program-reporting requirements.

(a) A water system that is subject to the public-education requirements in Section 7 of this administrative regulation shall, within ten (10) days after the end of each period in which the system is required to perform public education tasks in accordance with Section 7(2) of this administrative regulation, send written documentation to the cabinet that contains:

1. A demonstration that the system has delivered the public-education materials that meet the content requirements in Section 7(1) and (2) of this administrative regulation and the delivery requirements in Section 7(3) of this administrative regulation;

2. A list of the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public-education materials during the period in which the system was required to perform the public-education tasks; and

3. If there have been no changes in the distribution list, a system that previously has submitted the information required by paragraph (a)2 of this subsection shall:

1. Certify that the public-education materials were distributed to the same list submitted previously; or

2. Resubmit the information required by paragraph (a)2 of this subsection.

(7) Reporting of additional monitoring data. A system that collects sampling data in addition to that required by this administrative regulation shall report the results to the cabinet within the first ten (10) days following the end of the applicable monitoring period, under Sections 6, 9, and 10 of this administrative regulation, during which the samples are collected.

Section 13. Recordkeeping requirements. A system subject to this administrative regulation shall retain on its premises original records of all sampling data, analyses, reports, surveys, letters, evaluations, schedules, cabinet determinations, and any other information required by Sections 3 through 10 of this administrative regulation. The water system shall retain the records required by this section for no fewer than twelve (12) years.

Section 14. Federal regulations adopted without change. (4) 40 C.F.R. 141.32(a) and 141.80, as in effect on July 1, 2006.

The subject matter of this administrative regulation relating to the analysis of data for lead and copper testing and water quality parameters shall be governed by these federal regulations. (12 years.)

HENRY LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY ACT OF THE CIGAR November 13, 2008
FILED WITH LRC: November 13, 2008 at 10 a.m.
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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at AARRS, February 9, 2009)

401 KAR 8:550. Radionuclides.

RELATES TO: KRS 224.10-100(301), 224.10-110, 40 C.F.R. 141.25, 141.26, 141.55, 141.65, EO 2008-507, 2008-531
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) authorizes the [Environmental and Public Protection] cabinet to enforce the statutes and administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use, EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation establishes the requirements for sampling and testing procedures for radionuclides and establishes maximum contaminant levels for safe drinking water.

Section 1. A community water system shall meet the requirements as specified with the requirements for monitoring and testing for radionuclides in accordance with 40 C.F.R. parts 141, 141, 141.55, and 141.65, effective July 1, 2007. The administrative regulation shall apply to all community water systems.

1. A community water system shall comply with the MCLs for combined radium 226 and radium 228, gross alpha particle activity, gross beta particle and photon radioactivity, and uranium.

2. Compliance shall be determined in accordance with the requirements of Sections 3 and 4 of this administrative regulation.

3. Compliance shall be determined in accordance with the reporting requirements of 401 KAR 8:070 and 8:075.
Section 2. MCL, Best Available Technology, and Small System Compliance Technology. (1) MCLs. The MCLs for radionuclides shall be:

(a) The MCL for combined radium-226 and radium-228 shall be five (5) pCi/L.

(b) Gross alpha particle activity (including radium-226, but excluding radon and uranium) shall be fifteen (15) pCi/L.

(c) The average annual concentration of beta particle and photon activity from manmade radionuclides in drinking water shall not produce an annual dose equal to the total body or any internal organ greater than four (4) millionth/year, or one million/year U.S. Code Environmental Protection (50) pCi/L to be of concern for beta particles.

(d) Uranium; thirty (30) micrograms per liter, or $\mu$g/L.

(2) Best available technology. The best available technology, or BAT, for achieving compliance with the MCLs in Section 2(a-1) of this administrative regulation shall be:

(a) Combined radium-226 and radium-228 by ion-exchange, reverse osmosis, or time softening.

(b) Uranium by ion-exchange, reverse osmosis, time softening, or coagulation/filtration.

(c) Gross alpha particle activity, excluding radon and uranium; and

(d) Beta particle and photon activity by ion-exchange, or reverse osmosis.

(3) MCLG shall be zero for all combined radium-226 and radium-228, gross alpha particle activity, gross beta particle and photon radioactivity activity and uranium.

(4) Small system compliance technology.

(a) Table B shall be used for determining small-system compliance technologies for radionuclides. Table B also provides the limitations of use for the given technology.

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Critical Organ</th>
<th>Preamplifier level (pCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tritium</td>
<td>Total body</td>
<td>20,000</td>
</tr>
<tr>
<td>Strontium-90</td>
<td>Bone-marrow</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit/Technology</th>
<th>Limitations</th>
<th>Operator</th>
<th>Skill level</th>
<th>Raw Water Quality and Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ion-exchange, IE</td>
<td>a</td>
<td>Intermediate</td>
<td>All groundwaters</td>
<td></td>
</tr>
<tr>
<td>Point-of-use, POUL, IE</td>
<td>b</td>
<td>Basic</td>
<td>All groundwaters</td>
<td></td>
</tr>
<tr>
<td>Reverse osmosis, RO</td>
<td>e</td>
<td>Advanced</td>
<td>Surface waters usually required for filtration</td>
<td></td>
</tr>
<tr>
<td>POU RO</td>
<td>b</td>
<td>Basic</td>
<td>Surface waters usually required for filtration</td>
<td></td>
</tr>
<tr>
<td>Lime softening</td>
<td>d</td>
<td>Advanced</td>
<td>All waters</td>
<td></td>
</tr>
<tr>
<td>Green sand</td>
<td>e</td>
<td>Base</td>
<td>All waters</td>
<td></td>
</tr>
</tbody>
</table>

Footnotes:
2. POU, or point-of-use, technology, a treatment device installed at a single tap, used for the purpose of reducing contaminants in drinking water at that one (1) tap. POU devices are typically installed at the kitchen tap.
3. The regeneration solution contains high concentrations of the contaminant ions. Disposal options shall be carefully considered.
4. If POU device is used for compliance, the water system shall provide a program for long-term operation, maintenance, and monitoring to ensure proper performance.
5. The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.
6. Removal efficiency may vary depending on water quality.
7. This technology may be very limited in application to a small system. Since the process requires static mixing, detention, and filtration, it is most applicable to a system with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.
8. This technology is most applicable to a small system that already has filtration in place.
9. Handling of chemical required during regeneration and pH adjustment may be too difficult for a small system without an adequately trained operator.
10. Assumes modification to a coagulation or filtration process already in place.

(b) Compliance technologies by system size category for radionuclides.

- Table C shall be used for determining the compliance technology for the indicated contaminant for the given system size.

The numbers shall correspond to those technologies found listed in paragraph (a) of this subsection.

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Compliance—technologies for system-size categories, population-served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uranium</td>
<td>4, 1, 3, 4, 10, 1, 2, 3, 4, 5, 1, 2, 3, 4, 10, 1, 2, 3, 4, 5, 2, 3, 4, 10</td>
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<tr>
<td>Radium-226</td>
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<td>Radium-228</td>
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<td>Uranium</td>
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<tr>
<td>Radium-226</td>
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<tr>
<td>Radium-228</td>
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</table>
Section 3. Detection Limits and Analytical Methods. (1) Detection limit. To monitor the radioactive-concentration in drinking water, the required sensitivity of the radioanalytical shall be determined by the detection limit. The detection limit shall be that concentration that is able to be observed with a precision of plus or minus 100 percent at the ninety-five (95) percent confidence level, or 1.0 standard deviation of the net counting rate of the sample.

(a) To determine compliance with the MCLs in Section 2 of this administrative regulation, the detection limit shall not exceed the following concentrations:

1. Gross alpha particles: three (3) pCi/L;
2. Radium-226: one (1) pCi/L;
3. Radium-228: one (1) pCi/L; and
4. Uranium: one (1) pCi/L.

(b) To determine compliance with the MCLs for manmade beta particles and photon emitters in Section 2(b) of this administrative regulation, the detection limit shall not exceed the following concentrations:

1. Tritium: 4,990 pCi/L;
2. Strontium-90: ten (10) pCi/L;
3. Strontium-90: two (2) pCi/L;
4. Iodine-131: one (1) pCi/L;
5. Cesium-134: ten (10) pCi/L;
6. Gross beta: four (4) pCi/L; and
7. Other radionuclides: one-thousandth (0.1) of the applicable limit.

(c) To determine compliance with the MCLs in Section 2 of this administrative regulation, the data shall be averaged, and the average shall be rounded to the same number of significant figures as the MCL for that contaminant.

(d) The cabinet may determine compliance or initiate enforcement action based on analytical results or other information compiled by their sanctioned representatives and agonists, specified in 40 C.F.R. 141.26(a), August 30, 2004.

(e) Analytical methods. The analytical methods specified in 40 C.F.R. 141.26(a) and (b) shall be used to determine compliance with Section 2 of the administrative regulation.


(a) Community water system. A community water system shall conduct initial monitoring to determine compliance with Section 2 of this administrative regulation by December 31, 2007. For the purposes of monitoring for these contaminants, the detection limit shall be as specified in Section 3 of this administrative regulation.

1. Existing system or source.

a. An existing community water system that uses groundwater, surface water, or both, shall sample at every entry point to the distribution system that is representative of the sources being used under normal operating conditions, referred to as "sampling point".

b. The system shall take a sample at each sampling point unless conditions make another sampling point more representative of each source or the cabinet designates a distribution system location, in accordance with subparagraph 2 of this paragraph.

2. New system or source.

a. A new community water system or community water system that uses a new source of water shall begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source.

b. A system shall conduct monitoring on possible contamination of or changes in the distribution system or treatment processes that may result in the concentration of radioactive activity in finished water.

(c) Initial monitoring. A system shall conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

1. A system without acceptable historical data as specified in subparagraph 2 of this paragraph shall collect four (4) consecutive quarterly samples at each sampling point before December 31, 2007.

2. Grandfathered data. The cabinet shall review historical monitoring data collected at a sampling point to satisfy the initial monitoring for that sampling point in accordance with 40 C.F.R. 141.26(a)(2)(ii), June 29, 2004. In the following situations:

   a. A community water system that has only one (1) entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003;

   b. A community water system that has multiple entry points and that has applicable historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003; and

   c. (i) A community water system with applicable historical data for a representative point in the distribution system may use the monitoring data form the last compliance monitoring period that began between June 2000 and December 8, 2003, if the historical data demonstrate pursuant to 40 C.F.R. 141.26(a)(2)(ii), June 29, 2004, that each entry point to the distribution system is expected to be in compliance based on the historical data and reasonable assumptions about the variability of contaminant levels between entry points.

   (ii) The cabinet shall make a written finding indicating how the data comply with these requirements.

3. The cabinet may waive the final two (2) quarters of initial monitoring, pursuant to 40 C.F.R. 141.26(a)(2)(ii), June 29, 2004, if requested for a sampling point if the results of the samples from the previous two (2) quarters are below the detection limit and

4. If the average of the initial monitoring results for a sampling point is above the MCL, the system shall collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are at or below the MCL, unless the system enters into another schedule as a part of a formal agreed order with the cabinet.

(b) Reduced monitoring. After the initial monitoring, in paragraph (a) of the subsection has been completed or fulfilled, a water system may request the cabinet to reduce the frequency of monitoring from once every 3 years to once every 6 (6) years, or once every 9 (9) years, under the following conditions:

1. If the average of the initial monitoring results for each contaminant is below the detection limit provided in Section 3 of the administrative regulation, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every nine (9) years;

2. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one half (1/2) the MCL, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every six (6) years.

(b) For combined radium-226 and radium-228, the analytical results shall be combined. The average of the initial monitoring results for radium-226 and radium-228 at or above the detection limit but at or below one half (1/2) the MCL, the system shall collect and analyze for that contaminant using at least one (1) sample at that sampling point every six (6) years;

3. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above one half (1/2) the MCL, the system shall collect and analyze at least one (1) sample at that sampling point every three (3) years;

4. For combined radium-226 and radium-228, the analytical results shall be combined.
unless the system enters into another schedule as part of a formal agreed order with the cabinet.

(d) Composing.

1. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium 226, radium 222, or uranium, a system may composite up to four (4) consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample.

2. The cabinet shall treat analytical results from the composited sample as the average analytical result to determine compliance with the MCLs and the future monitoring frequency.

3. If the analytical result from the composited sample is greater than one-half (1/2) the MCL, the cabinet shall direct the system to take additional quarterly samples before sampling under a reduced monitoring schedule.

(e) 1. A gross alpha particle activity measurement may be substituted for the required radium-226 measurement if the measured gross alpha particle activity does not exceed five (5) pCi/L.

2. A gross alpha particle activity measurement may be substituted for the required uranium measurement if the measured gross alpha particle activity does not exceed fifteen (15) pCi/L.

3. If the gross alpha particle activity measurement is in excess of the radium-226 or uranium measurement, the gross alpha particle activity result shall be used to determine the future monitoring frequency for radium-226 and uranium.

4. If the gross alpha particle activity result is less than the detection limit, one-half (1/2) the detection limit shall be used to determine compliance and the future monitoring frequency.

(f) 1. (B) Beta particle and photon radioactivity. To determine compliance with the MCLs in Section 2 of this administrative regulation and 40 C.F.R. 141.66(d), July 1, 2006, for beta particle and photon radioactivity, a system shall monitor at the frequency described below:

(a) A community water system, surface or groundwater, designated by the cabinet as vulnerable shall sample for beta-particle and photon radioactivity. The system shall collect quarterly samples for beta emitters and annual samples for tritium and strontium 80 at each entry point to the distribution system, called the sampling point, beginning within one (1) quarter after being notified by the cabinet. A system already designated by the cabinet shall continue to sample until the cabinet reviews and either reaffirms or removes the designation.

(b) If the gross beta particle activity minus the naturally occurring potassium-40 beta-particle activity at a sampling point has a running annual average, computed quarterly, less than or equal to the screening level of fifty (50) pCi/L, the system may reduce the frequency of monitoring at that sampling point to once every three (3) years.

2. a. A system shall collect all samples required in paragraph (b)(1) of this section during the reduced monitoring period.

2. b. A system shall continue to sample as required in paragraph (b)(1) of this section.

3. A community water system, surface or groundwater, designated by the cabinet as using waters contaminated by effluents from a nuclear facility shall sample for beta-particle and photon radioactivity. The system shall collect quarterly samples for beta emitters and iodine 131 and annual samples for tritium and strontium 80 at each entry point to the distribution system, called the sampling point, beginning within one (1) quarter after being notified by the cabinet. A system already designated by the cabinet shall be removed from the cabinet's list and continue to sample until the cabinet removes the designation.

1. Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples.

2. For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. More frequent monitoring shall be conducted if iodine-131 is identified in the finished water.


4. If the gross beta-particle activity minus the naturally occurring potassium-40 beta-particle activity at a sampling point has a running annual average, computed quarterly, less than or equal to the screening level of fifteen (15) pCi/L, the reduction in the frequency of monitoring at that sampling point shall be determined by the cabinet in accordance with 40 C.F.R. 141.26(b)(2)(v), June 20, 2004.

b. The system shall monitor at the required frequency in accordance with this paragraph during the reduced monitoring period.

b. a. For a system in the vicinity of a nuclear facility, the system may use environmental surveillance data collected by the nuclear facility instead of monitoring at the system's entry point, if the cabinet determines that the data is applicable to the nuclear facility's system in accordance with 40 C.F.R. 141.26(a)(2)(v), June 20, 2004.

b. If there is a release from the nuclear facility, a system that depends on the monitoring results of the nuclear facility shall not apply to the cabinet for a waiver from monitoring requirements specified in paragraph (a) or (b) of this subsection.

b. (d) A system may analyze for naturally occurring potassium-40 beta-particle activity from the same or equivalent sample used for the gross beta-particle activity analysis.

b. A system may substitute the potassium-40 beta-particle activity value from the total gross beta-particle activity value to determine if the screening level is exceeded.

b. The potassium-40 beta-particle activity shall be calculated by multiplying the elemental potassium concentration in mg/L by a factor of 0.82.

b. (e) If the gross beta-particle activity, minus the naturally occurring potassium-40 beta-particle activity exceeds the acceptable screening level, an analysis of the sample shall be performed to identify the major radioactive constituents present in the sample.

b. The applicable dose shall be calculated and summed to determine compliance with 40 C.F.R. 141.66(d)(1), July 1, 2006, using the formula in 40 C.F.R. 141.66(d)(2), July 1, 2006. Dose shall also be calculated and combined for measured levels of tritium and strontium-90 to determine compliance.

f. A system shall monitor monthly at the sampling point that exceeds the MCL in 40 C.F.R. 141.66(d), July 1, 2006, beginning the month after the exceedance occurs.

2. A system shall continue monthly monitoring until the system has established, by a rolling average of three (3) monthly samples, that the MCL is being met.

2. A system that establishes that the MCL is being met shall return to quarterly monitoring until it meets the requirements set forth in paragraph (a) or (b) of this subsection.

(f) General monitoring and compliance requirements—(a) The cabinet may request more frequent monitoring than specified in this section or may require confirmation samples. The results of the initial and confirmation samples, pursuant to 40 C.F.R. 141.26(c), June 20, 2004, shall be averaged in determining compliance.

(f) Each public water system shall monitor at the required frequency in accordance with this administrative regulation.

(f) Compliance: Compliance with this section shall be determined based on the analytical result obtained at each sampling point. If one (1) sampling point is in violation of a MCL, the system shall be in violation of the MCL.

(f) 1. For a system that monitors more than once per year, compliance with the MCL shall be determined by a running average at each sampling point.
b. If the average of any sampling point is greater than the MCL, then the system shall be out of compliance with the MCL immediately.

2. For a system monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system shall be out of compliance with the MCL immediately.

3. A system shall include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

4. If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance shall be based on the running average of the actual number of samples collected, not the required number of samples.

5. If a sample result is less than the detection limit, zero shall be used to calculate the annual average, unless the gross alpha activity is being used instead of radium-226 or uranium.

b. If the gross alpha particle activity result is less than the detection limit, one half of 1.2] the detection limit shall be used to calculate the annual average.

6. The cabinet shall review results of obvious sampling error or analyze errors in accordance with 40 C.F.R. 141.269(c)(4), June 29, 2004.

7. If a MCL for radon-222 is set forth in Section 2 of this administrative regulation is exceeded, the operator of a community water system shall give notice to the cabinet pursuant to 401 KAR 8:020 and to the public as required by 8:070.


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HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: November 13, 2008
FILED WITH FLC: November 13 at 10 a.m.
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.

ENERGY AND ENVIRONMENT CABINET
Division for Environmental Protection
Division for Air Quality
(As Amended at ARRS, February 9, 2009)


RELATES TO: KRS 224.10-100, EO 2008-507, 2008-531, 40 C.F.R. Part 60[Chadster-224]


Section 1. Definitions. (1) "Indirect heat exchanger" or "IHE" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to the point of usage through a fluid medium that does not come in contact with or add to the products of combustion.

(2) "CEMS" means continuous emissions monitoring system.

(3) "Classification date" means:
(a) August 17, 1971, for indirect heat exchangers with a capacity greater than 250 million BTU per hour heat input for particulate emissions, 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 and sulfur dioxide emissions; and
(c) December 22, 1976, 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 particulate matter continuous emissions monitoring system.

Section 2. Applicability. (1) This administrative regulation shall apply to indirect heat exchangers having a heat input capacity greater than one (1) million BTU per hour commenced on or after the applicable classification date.

(2) Exceptions. Section 3(6)(a): Units subject to 40 C.F.R. 60.40 to 60.46 (Subpart D): 60.40Da to 60.52Da (Subpart Da); 60.49b to 60.49h (Subpart Db); or 60.49c to 60.48c (Subpart Dc) shall be exempt from this administrative regulation.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of any 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 4 and 5 of this administrative regulation to determine the allowable emission rate in terms of lbs per million BTU heat input.

(a) The permitted allowable emissions rate of an indirect heat exchanger shall not be changed due to inclusion or shutdown of another heat exchanger at the source.

(b) Sources may petition the cabinet to approve an allowable emission rate apportioned independently from heat input if the conditions specified in this subsection are met.

(2) The allowable emission rate shall be determined according to the following equation: F = [A + B + C + D + E + F] 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 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 on or after the applicable classification date.

6. F = alternate allowable emission rate in lbs per actual million BTU input.

(b) The total emissions (in lbs per hour) from all indirect heat exchangers at the source subject to this administrative regulation divided by the total actual heat input (in millions of BTU per hour) of the indirect heat exchangers shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection.

(c) A source 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 IE's rated heat input as specified in Sections 4 and 5 of this administrative regulation.
(d) The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:045 for each indirect heat exchanger subject to this administrative regulation.

(e) The source shall demonstrate that compliance shall be maintained with this subsection on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided in Section 3(3) of this administrative regulation, an indirect heat exchanger subject to this administrative regulation shall not cause emissions of particulate matter in excess of:

1. 0.05 lbs per million BTU actual heat input for IHEs with total heat input capacity of ten (10) million BTU per hour or less;

2. 0.10 lbs per million BTU actual heat input for IHEs with total heat input capacity of 250 million BTU per hour or more, and

(c) 0.6834 multiplied by the quantity obtained by raising the total heat input capacity (in millions BTU per hour) to the -0.2356 power for IHEs with heat input values greater than ten (10) million BTU per hour and less than 250 million BTU per hour, and

(d) Twenty (20) percent capacity exempt.

(f) For indirect heat exchangers with heat input capacity of 250 million BTU per hour or more, a maximum of twenty-seven (27) percent capacity shall be allowed for one (1) six (6) minute period in any sixty (60) consecutive minutes;

2. For indirect heat exchangers with heat input capacity of less than 250 million BTU per hour, a maximum of forty (40) percent capacity shall be allowed for a maximum of six (6) consecutive minutes in any sixty (60) consecutive minutes during fire box cleaning or stack blowing and

3. For emissions from an indirect heat exchanger caused by building a new fire, emissions during the period required to bring the boiler up to operating conditions shall be allowed. If the method used is recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

Section 5. Standard for Sulfur Dioxide. 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:

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 five-tenths (5.5) lbs per million BTU actual heat input for combustion of solid fuels;

(b) For IHEs with total heat input capacity of 250 million BTU per hour or more:

1. Eight-tenths (0.8) lbs per million BTU actual heat input for combustion of liquid and gaseous fuels; and

2. One and one-tenth (1.1) lbs per million BTU actual heat input for combustion of solid fuels;

(c) For IHEs with heat input values between those specified in paragraphs (a) and (b) of this subsection, the standard, in lbs per million BTU actual heat input, shall be equal to:

1. For combustion of liquid and gaseous fuels, the value 7.7223 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4105 power; and

2. For combustion of solid fuels, the value 13.8761 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.

Compliance shall be based on the total heat input from all fuels burned.

(f) For simultaneously burning different fuels in combination, the applicable standard shall be determined by arresting BTUs pursuant to the following equation: Allowable sulfur dioxide emission in lbs per million BTU per hour heat input = (a + b)(y + 2), in which:

(a) y = percent total heat input derived from liquid or gaseous fuel;

(b) z = percent total heat input derived from solid fuel;

(c) a = allowable sulfur dioxide emission in lbs per million BTU heat input derived from liquid or gaseous fuel; and

(d) b = allowable sulfur dioxide emission in lbs per million BTU heat input derived from solid fuel.

Section 6. Standard for Nitrogen Oxides. (1) An indirect heat exchanger with heat input capacity of 250 million BTU per hour or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:

(a) 0.50 lbs per million BTU heat input (0.36 g per million cal) derived from gaseous fuel;

(b) 0.50 lbs per million BTU heat input (0.54 g per million cal) derived from liquid fuel;

(c) 0.70 lbs per million BTU heat input (1.26 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) 0.60 lbs per million BTU derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired IHE.

(f) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be prorated using the equation: Allowable nitrogen dioxide emission in lbs per million BTU heat input = (x(0.50) + y(0.50) + 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 other solid fossil fuel, wood residue, or biomass, the standard for nitrogen oxides shall not apply.

(4) Cyclone-fired IHEs burning fuel containing at least twenty-five (25) percent lignite mined in North Dakota, South Dakota, or Montana shall be subject to subsection (1)(a) of this section for all types of fuel burned 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.

(f) Except as provided in subsection (5) 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.

Subsection (1)(a) 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;

(e) 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 test results show nitrogen oxide emissions:

(a) are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or

(b) are greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests;

(c) For a source exempt from installing CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required;

(d) For IHEs not using flue gas desulfurization devices, CEMS for sulfur dioxide emissions shall not be required if the source mon-
itors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (5) of this section.

(3) For performance evaluations subject to 401 KAR 59-005, Section 4(3), and calibration checks subject to 401 KAR 59-005, Section 4(d), the following procedures shall be used:

(a) Reference Methods 6-5C or 7-7E, incorporated by reference in 401 KAR 59-015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;

(b) Sulfur dioxide or nitric oxide, as applicable, shall be used for precleaning 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>1.000</td>
<td>500</td>
</tr>
<tr>
<td>Liquid</td>
<td>1.000</td>
<td>500</td>
</tr>
<tr>
<td>Solid</td>
<td>1.000</td>
<td>500</td>
</tr>
</tbody>
</table>

Determination of Span Value (in parts per million)

Combinations 1000 x 1.500x 500(1x + 1.000x)

3. For the table in subparagraph 2 of this paragraph:

a. shall indicate that a value shall not be applicable;

b. x = fraction of total heat input derived from gaseous fossil fuel;

c. y = fraction of total heat input derived from liquid fossil fuel;

d. z = fraction of total heat input derived from solid fossil fuel;

(e) The source shall submit the proposed CEMS span values for all IHEs that simultaneously burn fossil fuel and nonfossil fuel for cabinet approval pursuant to 40 C.F.R. 60 13(6) and this subsection;

(f) For continuous monitoring systems installed pursuant to subsection (1) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable requirement in the following units:

1. For IHEs weighing 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 = 20.0 CF divided by (20.09 minus percent oxygen) in which E, C, and percent oxygen shall be determined pursuant to subsection (5) of this section.

3. For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon content concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used:

E = (100 CF)/1000 (percent carbon dioxide), in which E, C, and percent carbon dioxide shall be determined pursuant to subsection (5) of this section.

4. For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon content concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used:

F = (100 CF)/1000 (percent carbon dioxide), in which E, C, and percent carbon dioxide shall be determined pursuant to subsection (5) of this section.

5. The values used in the equations in subsection (4)(a) and (b) of this section shall be as follows:

(a) E = pollutant emissions in million carbon (cal) (lb/million BTU); and

(b) C = pollutant concentration in g/dscm (lb/dscf) determined by multiplying the average concentration (ppm) for each one-hour period by 0.000415 M g/dscm per ppm; multiplied by two and five-tenths (2.5) multiplied by ten (10) raised to the negative nine (9) power; and multiplied by Mlb/dscf per ppm in which M equals:

1. Pollutant molecular weight in g/mole (lb/lb-mole); or

2. 64.07 for sulfur dioxide and 46.91 for nitrogen oxides;

(c) Fc = a factor representing a ratio of the volume of dry flue gases generated to the carbon dioxide and the carbon dioxide generated to the carbon dioxide of the fuel burned (Fc) and a factor representing a ratio of the volume of carbon dioxide generated to the carbon dioxide of the fuel burned (Fc);

(d) For biomass fuels, Fc equals 1.0104; and

(e) For coking coal, Fc equals 1.0104.

F. Fc = a factor representing a ratio of the volume of dry flue gases generated to the carbon dioxide and the carbon dioxide generated to the carbon dioxide of the fuel burned (Fc), 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 59-015, as applicable;

1. For anthracite coal as classified according to ASTM D388-65(72), Fc equals 10.140 dscf/million BTU and Fc equals 1980 standard cubic feet (scf) CO/million BTU;

2. For bituminous and bituminous as classified according to ASTM D388-65(72), Fc equals 9520 dscf/million BTU and Fc equals 1610 scf CO/million BTU;

3. For liquid fossil fuels including crude, residual, and distillate oils, Fc equals 9220 dscf/million BTU and Fc equals 1450 scf CO/million BTU;

4. For gaseous fossil fuels, Fc equals 8740 dscf/million BTU;

5. For natural gas, propane, and butane fuels, Fc equals 1040 scf CO/million BTU for natural gas, 1200 scf CO/million BTU for propane, and 1260 scf CO/million BTU for butane;

6. For anthracite coal as classified according to ASTM D388-65(72), Fc equals 2222 scf CO/million BTU;

7. For wood residue other than bark, Fc equals 2323 dscf/million BTU and Fc equals 2124 scf CO/million BTU;

8. For lignite coal as classified according to ASTM D388-65(72), Fc equals 9990 dscf/million BTU and Fc equals 2020 scf CO/million BTU;

9. The owner or operator may use the equation given in subparagraph 1 of this paragraph to determine an F factor (dscf/million cal, or dscf/million BTU) on a dry basis or F factor (scf CO/million cal, or scf CO/million BTU) on either wet or dry basis and shall be determined pursuant to subsection (6) of this section;

10. The F and Fc Factor shall be determined by the following:

F = 2272.2 (CA) + 95.5 (CA) + 35.6 (CS) + 0.7 (SN) - 29.7 (OH)/GVC (metric units); and

F = 10.4 (CA) + 1.53 (CA) + 0.57 (CS) + 0.14 (SN) - 0.46 (OH)/GVC (English units); and

Fc = (2.0 x 10^-10) (CA)/GVC (metric units); and

Fc = (3.21 x 10^-10) (CA)/GVC (English units); and

H, C, S, N, and O shall be identified by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GVC by ultimate analysis of the fuel fired using ASTM method D1317-73 or D3176-74 (soil solids) or calculated from results using ASTM methods D1137-75(75), D1945-64(74), or D1945-67(72) (gaseous fuels) as applicable and

GVC shall be the gross calorific value (cal/g, BTU/g) of the fuel burned determined by ASTM test methods D2015-66(72) for solid fuels and D1856-64(70) for gaseous fuels as applicable and

11. For IHEs firing combinations of fuels, the F and Fc factors determined by paragraphs (c) and (d) of this subsection shall be determined in accordance with the applicable formula as follows:

F = xF + yF + zF, where:

a. x = fraction of total heat input derived from gaseous fuel, liquid fuel, or solid fuel, respectively; and

b. Fc = value of F for gaseous, liquid, and solid fuels, respectively pursuant to subsection (5)(c) and (d) of this section, or

2. where:

F = \sum \frac{X}{X(FC)}

a. x = fraction of total heat input derived from each type fuel; and

b. F = applicable Fc factor for each fuel type determined pursuant to subsection (5)(c) and (d) of this section;

(1) For reports required pursuant to 401 KAR 59-005, Section 3(5), periods of excess emissions shall be reported as follows:

(a) Excess emissions shall be any six (6) minute period during the which the average opacity or emission exceeds twenty (20) percent any time, except that one (1) six (6) minute average per hour of
up to twenty-seven (27) percent opacity shall not be required to be reported; 
(b) For sulfur dioxide, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed an applicable standard in Section 5 of this administrative regulation; and 
(c) For nitrogen oxides, excess emissions for IHEs using a continuous monitoring system for measuring nitrogen oxides shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) exceed an applicable standard in Section 6 of this administrative regulation.

(7) The source may request, in writing to the cabinet, to install a Particulate Matter Continuous Emissions Monitoring System (PM CEMS) in lieu of the requirement of subsection (1)(a) of this section for a CEMS as follows:

(a) Excess emissions for an IHE using PM CEMS shall be determined by a boiler-operating-day as defined by 40 C.F.R. 60.411(Da), in which the average emissions (arithmetic average of all operating one (1) hour periods) exceed the applicable standard published in 40 C.F.R. 60.411(Da).

(b) The source shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da.

Section 8. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, the reference methods specified in 40 C.F.R. Part 60, Appendix A, Part A, and 40 C.F.R. Test Methods 140-149, Part B, 60.411(Da), 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 site and sample traverses;
(b) Reference Method 3 shall be used for gas analysis 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 sulfur dioxide;
(e) Reference Method 7 shall be used for the concentration of nitrogen oxides; and
(f) Reference Method 9 shall be used for visible emissions.

(2) 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 dscm (thirty (30) dscm) 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 filter holder heating systems in the sampling train shall be set to provide a gas temperature not finer 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 dscm (0.71 dscm) for each sample; and 
(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.
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), and (e) of this subsection are met. Such allowable emission rate shall be determined according to the following equation.

\[ F = (AB - DEG) \text{ where:} \]

- \( A \) = 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 commenced 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, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;
- \( D \) = the allowable emission rate (in pounds per million BTU input) as determined according to 401-KAR 61-016, Section 3(1);
- \( E \) = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced before the applicable classification date;
- \( F \) = the alternate allowable emission rate (in pounds per actual million BTU input).

(b) At no time shall the owner or operator of the source allow the total emissions (in pounds per million BTU input) from non-all affected facilities to exceed 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 commenced on or after the applicable classification date to exceed the 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 61-016 on each affected facility under such conditions as may be specified by the cabinet.

(e) Upon petition, the cabinet will establish an alternate emission rate in accordance with this subsection if the owner or operator demonstrates to the cabinet's satisfaction that the source will maintain compliance with this subsection on a continual basis.

Section 4—Standard for Particulate Matter—Except as provided in Section 2(2) 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 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 (a) of this subsection;
- (e) Eight-tenths (0.80 lb. per million BTU derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fused unit.

(2) 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 A of this administrative regulation.

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

Section 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 any affected facility any gases which contain sulfur dioxide in excess of that specified below.

(1) For sources which have a total heat input capacity, as determined by Section 3(1) of this administrative regulation, which is:

- (a) Ten (10) million BTU per hour or less, the standard is three (3.0) pounds per million BTU actual heat input for combustion of liquid and gaseous fuels and five (5.0) pounds per million BTU actual heat input for combustion of solid fuel;
- (b) 250 million-BTU per hour or more, the standard is eight (8.0) pounds per million BTU actual heat input for combustion of liquid and gaseous fuels and one and two tenths (1.2) pounds per million BTU actual heat input for combustion of solid fuel;
- (c) For heat input values between those specified in paragraphs (a) and (b) of this subsection, the standard is pounds per million BTU actual heat input; 7.7233 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.4106 power;
- (d) For combustion of solid fuels, 13.6781 times that quantity obtained by raising the total heat input capacity (in millions of BTU per hour) to the 0.4104 power.

(2) When different fuels are burned simultaneously in any combination the applicable standard shall be determined by proration using the equation given in Appendix A of this administrative regulation.

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

Section 6—Standard for Nitrogen Oxides—(1) No owner or operator of an affected facility with a heat input capacity of 250 million BTU per hour or more subject to the provisions of this administrative regulation shall cause to be discharged into the atmosphere any gases which contain nitrogen oxides expressed as nitrogen dioxide in excess of:

- (a) Two-tenths (0.20 lb. per million BTU heat input (0.36 g. per million cal) derived from gaseous fuel;
- (b) Three-tenths (0.30 lb. per million BTU heat input (0.54 g. per million cal) derived from liquid fuel;
- (c) Seven-tenths (0.70 lb. per million BTU heat input (1.26 g. per million cal) derived from solid fuel (except lignite);
- (d) Six-tenths (0.60 lb. per million BTU heat input (1.08 g. per million cal) derived from lignite or lignite and wood residue except as provided under paragraph (a) of this subsection;
- (e) Eight-tenths (0.80 lb. per million BTU derived from lignite which is mined in North Dakota, South Dakota, or Montana and which is burned in a cyclone-fused unit.

(2) Except as provided in subsections (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.

(3) When a fossil fuel containing at least twenty-five (25) percent by weight of coal refuse is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, the standard for nitrogen oxides does not apply.

(4) Cyclone-fused units which burn fuel containing at least twenty-five (25) percent of lignite that is mined in North Dakota, South Dakota, or Montana remain subject to subsection (1)(a) of this section regardless of the type 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 260 million BTU per hour rated heat input capacity.

(a) 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 either oxygen or carbon dioxide except as provided in subsection (2) of this section.

(b) 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 emissions are not required.

(b) For an indirect 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.

(c) Notwithstanding 401 KAR 69-006, Section 4(3), installation of a continuous monitoring system for nitrogen oxides may be delayed up to the first performance tests under 401 KAR 69-006, Section 4(3), and the owner or operator demonstrates during the performance test that emissions of nitrogen oxides are less than seventy-five (75) percent of the applicable standards in Section 6 of this administrative regulation, a continuous monitoring system for measuring nitrogen oxide emissions is not required. If the initial performance test results show that nitrogen oxide emissions are greater than seventy-five (75) percent of the applicable standards, 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 69-006, Section 2, and comply with all other applicable monitoring requirements under this chapter.

(d) If an owner or operator does not install any continuous monitoring systems for sulfur dioxide and nitrogen oxides, as provided in subparagraph (a) and (b) of this subsection, a continuous monitoring system for measuring either oxygen or carbon dioxide is not required.

(e) For an indirect heat exchanger that does not use a flue gas desulfurization device, a continuous monitoring system for measuring sulfur dioxide emissions is not required if the owner or operator monitors sulfur dioxide emissions by fuel sampling and analysis under subsection (6) of this section.

(f) For performance evaluations under 401 KAR 69-006, Section 4(3), and calibration checks under 401 KAR 69-006, Section 4(4), the following procedures shall be used:

(a) Reference Method 6 or 7, filed by reference in 401 KAR 60-04, as applicable, shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

(b) Sulfur dioxide or nitrogen oxide, as applicable, shall be used for preparing calibration gas mixtures under Performance Specification 2 of Appendix B to 40 C.F.R. 60, as filed by reference in 401 KAR 60-016.

(c) For affected facilities burning fossil fuel(s), the span value for continuous monitoring systems measuring the opacity of emissions shall be eighty (80), ninety (90), or 100 percent and for a continuous monitoring system measuring sulfur dioxide or nitrogen oxide the span value shall be determined as shown in Appendix C of this administrative regulation.

(d) All span values computed under paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 0.00 ppm.

(e) For an indirect heat exchanger that simultaneously burns fossil fuel and nonfossil fuel, the span value for all continuous monitoring systems shall be subject to the cabinet's approval.

(f) A continuous monitoring system for measuring either oxygen or carbon dioxide in the flue gas, shall be installed, calibrated, maintained and operated by the owner or operator.

(2) When a continuous monitoring system for measuring oxygen is selected, the measurement of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry). Alternative procedures approved by the cabinet and the U.S. EPA shall be used when measurements are on a wet basis. When measurements are on a dry basis, the following conversion procedure shall be used: E = E(0)(65/100) (20.9 % - oxygen), where E = C, Fe, and 20.9 % oxygen are determined under subsection (6) of this section.

(b) When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of a pollutant concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry). The following conversion procedure shall be used: E = E(0)(65/100) (% carbon dioxide) where: E = C, Fe and % carbon dioxide are determined under subsection (6) of this section.

(c) When a continuous monitoring system for measuring carbon dioxide is selected, the measurement of the concentration and carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure shall be used: E = (100 X E(0)) (% carbon dioxide) where: E = C, Fe and % carbon dioxide are determined under subsection (6) of this section.

The values used in the equations under subsection (6) of this section are defined as follows:

(a) E = Pollutant emission, g/million cal (g/mln BTU).

(b) C = Pollutant concentration, g/dscf (g/m³).

(c) L = Pollutant emission, g/dscf or g/m³.

(d) D = Power factor, 0.80 - 0.90.

(e) F = Flow rate, dscf per ppm (m³ per ppm).

(f) M = Molecular weight, kg/mole.

(g) H = Heats of formation.

(h) A = A constant.

(i) Z = Z catalyst.

(j) F = Flow rate, dscf per ppm (m³ per ppm).

(k) E(0) = E(0) constant.

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(z) E(0) = E(0) constant.

{a) E(0) = E(0) constant.
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(c) Excessive emissions are defined as any six (6) minute-period during which the average opacity of emissions exceed twenty (20) percent opacity, except that one (1) six (6) minute-average per hour of up to twenty-seven (27) percent opacity need not be reported.

(b) Sulfur dioxide. Excessive emissions for affected facilities are defined as: Any three (3) hour-period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed the applicable standard under Section 6 of this administrative regulation.

(c) Nitrogen oxides. Excessive emissions for affected facilities using a continuous monitoring system for measuring nitrogen oxides are defined as any three (3) hour-period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) exceed the applicable standards under Section 6 of this administrative regulation.

(8) The cabinet may require for any indirect heat exchanger unit of 825 million BTU/hour heat input or less any or all the emission and fuel monitoring required by this section.

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 60:045 shall be used to determine compliance with the standards as prescribed in Sections 4, 5, and 6 of this administrative regulation as follows:

(a) Reference Method 1 for the selection of sampling site and sample traverses;

(b) Reference Method 3 for gas analysis to be used when applying Reference Methods 5, 6, and 7;

(c) Reference Method 5 for concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 for the concentration of sulfur dioxide;

(e) Reference Method 7 for the concentration of nitrogen oxides;

(f) Reference Method 9 for visible emissions;

(2) For Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverses from the sampling point. The sampling time for each run shall be at least sixty (60) minutes and the minimum sampling volume shall be 0.06 dfl (30 mililiters) except that smaller sampling times or volumes may be used when associated with by-source variables or other factors may be approved by the cabinet. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160 degrees Centigrade (320 degrees Fahrenheit).

(3) The sampling site shall be the same as that selected for Reference Method 3. The sampling point in the duct shall be at the center of the cross-section or at a point closest to the wall, and the point shall be chosen such that the flow is steady and the duct is not the point of a duct entrance. The sampling point shall be located 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 sampling volume shall be 0.02 dfl (0.71 mililiters) 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 6, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the sample 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 

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STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.6453, 156.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) *Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs,* [February 12, 2009 (October-2008) [February-2004]], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 14, 2008 at 4 p.m.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended by the House Standing Committee on Education, February 10, 2009 and the Senate Standing Committee on Education, February 12, 2009)

703 KAR 5:080. Administration Code for Kentucky’s Educational Assessment Program.

RELATES TO: KRS 156.6453, 156.6455

STATUTORY AUTHORITY: KRS 156.070, 156.6453, 156.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes an Administration Code for Kentucky's Educational Assessment Program for appropriate testing practices for state required tests.

Section 1. Incorporation by Reference. (1) The *Administration Code for Kentucky's Educational Assessment Program,* [February 12, 2009 (August-2008) [June-1999]], is hereby adopted and is incorporated by reference.

(2) This document may be inspected, [and] copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 14, 2008 at 4 p.m.
EDUCATION CABINET
Kentucky Board of Education
Department of Education

(As Amended by the House Standing Committee on Education, February 10, 2009 and the Senate Standing Committee on Education, February 12, 2009)

703 KAR 5:140. Requirements for school and district report cards.

RELATES TO: KRS 158.031, 158.6453(13)
STATUTORY AUTHORITY: KRS 158.6453(13)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(13)(13) requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance. This administrative regulation establishes the standards for a school and district report card.

Section 1. Definitions. (1) "Average student-teacher ratio" means the total enrollment of the school (end of year membership) divided by the number of teachers on a full-time equivalent (FTE) basis, not including administrators, guidance counselors, or media specialists.

(2) "Average years of experience" means the average number of years of professional experience of classroom teachers excluding certified staff such as administrators, guidance counselors, or media specialists.

(3) "Base year" means the academic year immediately preceding the publication of the school report card components.

(4) "Content-focused professional development" means professional development that is teacher focused, discipline-based and content grounded, and provides teachers with in-depth learning experiences in the chosen core discipline.

(5) "Core academic subject" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

(6) "District report card" means the summary of district and school information that is published in the newspaper with the largest paid circulation in the county in which the district resides.

(7) "School" means an institution as defined in KRS 160.55(1)(b)(4) as "school as defined in KRS 703.8040; Section 4(1).

(8) "School report card" means the [printed] compilation of school information to be published on the Kentucky Department of Education Web site and linked to school Web sites or in a printed copy if requested.

(9) "Sent by the school to every parent or guardian with a child or children in a school" means the school report card that is sent to every parent or guardian with a child or children in a school.

Section 2. School Report Card [(base)]. (1) A school report card shall be published on the Kentucky Department of Education Web site and linked to school Web sites. The school report card shall be printed by the school upon request [(base)]. School report card shall be sent to the parent or guardian of each student in a school by United States mail unless a waiver is granted by the Department of Education for a proposal that is equally effective in notifying parents or guardians of the card and its contents. If a parent or guardian has more than one (1) child in the same school, one (1) report card may be sent to the family.

(2) A school report card shall include the following information:

(a) The name and address of the school, the name of its principal, and telephone, fax and e-mail contact information, all of which shall be current;

(b) The total enrollment of the school;

(c) The school level results of all components of the Commonwealth Accountability Testing System;

(d) The school level results of state-sanctioned performing arts competitions or other state-sanctioned academic or speech competition, if applicable;

(e) Teacher qualification information, including:

1. The percent of classes taught by teachers with a major, minor, or the equivalent in the subject being taught (i.e., certified via an alternative route, having an endorsement in the area being taught, middle-school areas of concentration for middle-school certification, passing with a passing score on PRAXIS II content test, or passing assessments stipulated by the Education Professional Standards Board);

2. The percent of classes taught by teachers participating in content-focused professional development related to the content being taught during the base year;

3. The percent of teachers with a masters degree or greater or the equivalent; and

4. Average years of teaching experience;

3. Percentage of teachers with emergency or provisional certification;

4. Percentage of core academic subject classes not taught by highly qualified teachers;

5. The number of teachers certified by the National Board for Professional Standards;

6. The professional qualifications of all teachers expressed as percentages, including bachelors, masters, Rank I, specialist, and Ph.D., or Ed.D. degrees;

(f) School safety data including:

1. Whether visitors are required to sign in;

2. Whether all parents receive the district discipline code;

3. What procedures are in place for drug and weapons detection;

4. The percentage of classrooms with telephones able to access outside lines; and

5. Data detailing safety violations of aggravated assault (with intent to cause injury), drug abuse, and weapons. The safety data shall include:

a. The number of incidents; and

b. The number of students suspended or expelled for that kind of incident;

(g) Student resource data including:

1. Spending per student at the school, district and state level;

2. Average student to teacher ratios at the school, district, and state level;

3. Student to Internet connected instructional computer ratios at the school, district and state level;

4. Percentage of computers five (5) years old or less and

5. Description of integration of technology into instruction;

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(h) Parental involvement information including:
1. Number of students whose parent or guardian had at least one (1) teacher conference;
2. Number of parents and guardians voting in school council elections;
3. Number of parents and guardians serving on the school council or its committees; and
4. Number of school-related volunteer hours;
(i) A narrative describing to the public actions being taken to address issues in equity related to the delivery of educational services to all students; and
(j) The names of members of the current year school council with contact information, including telephone numbers or e-mail addresses where the members can be reached for questions or comments.

(k) Hyperlink to the current Comprehensive/Consolidated School Improvement Plan (CSIP) if on the school website, or the CSIP available for examination in school.

Section 3. As accurate, reliable data become available from student information systems, the Kentucky Department of Education will link school, district, and state data to the school and district report cards, including existing reports. Participation, performance in advanced placement courses, the issuance of commonwealth diplomas, participation in gifted and talented programs and participation in special education with instructional and testing accommodations, all disaggregated to the extent permitted under KRS 150.700-150.250, which protects the confidentiality of an individual student’s educational records. (School Report Card—Expanded).

(1) A school report card (expanded) shall be available for viewing on request in the office of the school. Copies shall be made available at no charge or at a charge not to exceed cost, except for all data disaggregation pages which shall be supplied at no-cost.

(a) The school report card (expanded) shall include:
(2) The data disaggregation pages of reports supplied by the Department of Education;
(3) Documentation of plan, policies and procedures specified in KRS 150.440 for assisting students at risk of academic failure or of engaging in disruptive and disorderly behavior;
(4) The number of students and the percentage of the student population participating in special education programs;
(5) The number of students and the percentage of the student population receiving instructional accommodations;
(6) The executive summary from the school consolidated plan;

(g) A listing of average class sizes for core classes including reading, mathematics, science, social studies and writing at all grade levels, and, if feasible, arts and humanities and practical living and vocational studies classes;

(h) A school technology report. The school technology and the learning interface section from the consolidated planning comprehensive needs assessment and any technology related action items included in that plan may be used to fulfill this requirement; and

(i) The number of students enrolled for a fifth year in the primary program, if the school includes a primary program.

(j) Upon the implementation of a statewide student data base, the following shall be included in the expanded school report cards:

(a) At the high school level, a list of the advanced placement subjects offered by grade, the total number of students enrolled in each advanced placement class, and those enrollments disaggregated by gender, race, and free and reduced lunch participation.

(b) At the high school level, an indication of whether a Commonwealth diploma is offered, if offered, the number of students earning this diploma shall be disaggregated by gender, race, and free and reduced lunch participation.

(c) The total number of students enrolled in the gifted and talented program in each of the following areas: disaggregated by gender, race, and free and reduced lunch participation.

(d) General intellectual;

Section 4. District Report Card (Expanded). (1) A district report card shall include a district level summary of all school data required on the school report card (base) and shall be the aggregation of the school report cards by grade level.

(2) This district card shall be published in the newspaper with the largest circulation in the county by the date specified in Section 6 of the administrative regulations. The base district report card shall include a narrative describing to the public actions being taken to address issues in equity related to the delivery of educational services to all students.

(3) The district report card [base] shall [also] include the names and appropriate addresses of the district superintendent and members of the board of education.

(4) The district report card shall contain the Adequate Yearly Progress (AYP) status of all district schools and the percentage of core academic subject classes taught by highly qualified teachers aggregated and disaggregated by high poverty compared to low poverty schools (schools in the top quartile of poverty and the bottom quartile of poverty in the state).

(5) The district report card shall include a list of district schools with primary programs and the number of students in each school requiring five (5) years to complete the primary program.

(6) The district report card shall be linked to the District Comprehensive/Consolidated Improvement Plan and other Web-based reports detailing district academic performance when these reports become available.

Section 5. District Report Card (Expanded). (1) A district report card (expanded) shall be available for viewing in the district office no later than the date specified in Section 6 of the administrative regulation. Copies shall be made available at no charge or at a charge not to exceed cost, except for all data disaggregation pages which shall be supplied at no-cost.

(a) The data disaggregation pages of reports supplied by the Department of Education;
(b) Documentation of plan, policies and procedures specified in KRS 150.440 for assisting students at risk of academic failure or of engaging in disruptive and disorderly behavior for the district;
(c) The number of students and the percentage of the student population participating in special education programs;
(d) The number of students and the percentage of the student population receiving instructional accommodations;
(e) The executive summary from the district consolidated plan;

(f) A listing of average class sizes for core classes including reading, mathematics, science, social studies and writing at all grade levels, and if feasible, arts and humanities and practical living and vocational studies classes;

(g) A school district technology report. The district technology plan as required by KRS 156.516 and 156.555 and the district technology and the learning interface section from the consolidated planning comprehensive needs assessment and any technology related action items included in this plan may be used to fulfill this requirement; and

(h) The number and percent of students enrolled for a fifth year in the primary program in the district.

(1) Copies of all base school report cards.
(2) Upon the implementation of a statewide student data base, the following shall be included in the expanded district report card:

(a) At the high school level, a list of the advanced placement subjects offered by grade, the total number of students enrolled in each advanced placement class, and those enrollments disaggregated by gender, race, and free and reduced lunch participation.

(b) The average advanced placement examination scores by subject shall be disaggregated by gender, race, and free and reduced lunch participation.

(c) General intellectual;
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(b) At the high school level, an indication of whether a Commonwealth diploma is offered. If offered, the number of students earning this diploma shall be disaggregated by gender, race, and free and reduced lunch participation; and
(c) The total number of students enrolled in the gifted and talented program in each of the following areas: disaggregated by gender, race, and free and reduced lunch participation:
1. General intellectual;
2. Specialeducation;
3. Creativity;
4. Leadership; and
5. Creative and performing arts.

Section 6) Reporting Requirements: Timelines. (1) Prior to publication printing, the school council or, in the absence of a council, the principal and the superintendent shall review and approve the text and data provided for the school and district [school report cards (base) and school report card (expanded)]. The school report card and district report card shall be published on the Kentucky Department of Education Website and made available on the school and district websites and shall be supplied by the school and districts in printed format if requested (base) shall be printed and shall be sent to parents and guardians having students in the schools.

(2) A school and district report card (base) may be placed upon the Internet on a site maintained by the district and shall be linked to the official Department of Education Website.

(3) District and school data supplied by the Department of Education shall be available electronically to districts no later than November 1 of each year.

(4) A district shall have twenty-one (21) calendar days in which to report inaccurate data to the Department of Education school report card helpdesk and to request that the data be changed.

(5) The Department of Education shall have twenty-one (21) calendar days from the receipt of the data change request from the district in which to either correct the data or to report to the district that the data will not be altered.

(6) After all data alterations have been reported to the district by the Department of Education and before the school report card base is sent to parents and guardians, the district superintendent shall send a communication by letter, fax or email to the Department of Education accepting the data as amended.

(7) A school report card (base) shall be sent to all parents and guardians no later than seventy-seven (77) calendar days from the department's original release of data to the schools.

(8) A school report card (expanded) shall be available in the schools no later than the date when the school report card (base) is sent to parents and guardians.

(9) A district report card (base) shall be published in the newspaper with the largest paid circulation in the county no later than the second Sunday in February.

(10) A district report card (expanded) shall be available in the district central office no later than the date when the district report card is published in the newspaper, and the school (base and expanded) and district (base and expanded) report cards may be made available on the Internet.

(11) All school and district report cards shall be made available to the Department of Education upon request.

Section 7(19) Noncompliance. (1) Noncompliance shall include:
(a) Failure to meet a publication deadline;
(b) Failure to mail school report cards (base) or to implement a Department of Education approved plan for distributing them;
(c) Nonpublication of a card component or components;
(d) Unauthorized alteration of data; or [3] falsification of data.

(2) [If a school or district fails to meet the timelines for publication of a component of the school report card, it shall communicate by letter to the Department of Education, identifying the component and indicating when the component was or will be communicated to the appropriate public.

(3) If a school or district fails to mail the school report cards (base) to parents and guardians and does not have a waiver granted by the Department of Education for a proposal that is equally effective in notifying parents or guardians of the card's contents, it shall determine which parents and guardians did not receive a report card and supply one (1) to each of them.

(4) If a school or district refuses to produce a required component of the school report card, the matter shall be referred to the Office of Communications, Office of Accountability, and made recommendations to the Commissioner of Education.

(5) If a school or district fails to produce data supplied by the department without authorization from the department, it shall supply documentation to the department demonstrating the accuracy of its changes. If the documentation cannot be produced or does not support the alterations made, the matter shall be treated as the publication of incorrect data in paragraph (4) of this subsection.

(6) If a school or district publishes incorrect information in a component of the report card, it shall supply corrected information to the audience that received the incorrect information, using the same medium by which it conveyed the original information. If there is reason to believe that the data error was intentional, the matter shall be referred to the office of communications to investigate and make recommendations to the Commissioner of Education.


(2) This material may be inspected, copied, or obtained, subject to the applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 600 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 158.653(13).

JON E. DRAUD, Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 15, 2008 at 9 a.m.

CONTACT PERSON: (606) 622-8305

EDUCATION CABINET
Kentucky Board of Education
Department of Education

(As Amended by the House Standing Committee on Education, February 10, 2009 and the Senate Standing Committee on Education, February 12, 2009)

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070, 158.6452
STATUTORY AUTHORITY: KRS 158.070, 158.070
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.070(8) requires schools to provide continuing education [beyond the minimum-school-term] for students who [or] need additional instructional time to achieve the outcomes defined in KRS 158.6452. KRS 158.070(9) of "extended services" and requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those
services during the regular school day. (KRS 156.070(a) requires the Kentucky Board of Education to establish criteria for waivers by which programs may be scheduled on a limited basis during the regular school day.) This administrative regulation established requirements for extended school services regardless of when during the school day or calendar they are delivered.

Section 1. Definitions. (1) "AS program" means an alternative program which is a district-operated and district controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs, its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the AS school as opposed to unconditionally accepting court ordered placements). Students enrolled in AS program typically include:

(a) Actual dropout returning to an alternate educational environment;
(b) Potential or probable dropouts;
(c) Drug abusers;
(d) Physically abused students;
(e) Disciplining problem students;
(f) Nontraditional students (e.g., students who have to work during the school day); or
(g) Students needing treatment (e.g., emotional or psychological).

(2) "AS program" means a district-operated instructional program in a nondistrict-operated institution or school.

(3) "Diagnostic Assessment," which may also be called "formative assessment" or "Interim/Benchmark assessment," means an assessment that is used to identify gaps in student learning in specific content areas.

(4)(2) "Extended school services" or "ESS" means instructional and support services provided:

(a) By school districts for students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or be able to meet the [need additional time to achieve] academic expectations in 703 KAR 4060 without additional time or differentiated opportunity to learn; and

(b) at times separate from the regular school day, regular school week, or the minimum school term unless a district's request for a waiver meets the criteria established in Section 7 of this administrative regulation and has been approved by the Commissioner of Education.

(c) As interventions included in the student's intervention plan, in primary through grade 5, or in the student's Individual Learning Plan, in grades 6 through 12, to ensure that the student remains in school and is on track to meet goals for postsecondary education and/or adult life.

(5)(2) "Formative assessment" means the process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended learning outcomes.

(6)(2) "Individual Learning Plan" means a plan to help students grades 6 through 12 better focus their coursework on individual goals as they prepare for postsecondary study and careers.

(7)(2) "Interim or benchmark assessments" means assessments that are administered at the school or district level at prescribed intervals and aimed at collecting student instructional data.

(8)(2) "Summative assessment" means tests given at the end of instruction to determine what was learned.

(9)(2)(4) "Support services" means noninstructional components of a program that:

(a) Are provided to enable the student to realize the benefits of the instructional program; and

(b) May include transportation, instructional materials or supplies, student snacks, school-based counseling, community based mentoring, academic advising, parent training for follow through, or referrals for social, health or financial assistance through appropriate service agencies.

Section 2. Instructional Program. (1) The major emphasis of extended school services shall be to provide additional time and differentiated opportunity to learn in which rigorous academic and enrichment content are aligned with individual student needs to improve:

(a) To enhance the present level of performance of students who are having difficulty in one (1) or more content areas. Priority for ESS services shall be placed on designing and delivering services to students at academic risk with specific objectives that students are able to:

(b) Progress from grade to grade with their cohort;

(c) Exit elementary school ready to meet academic expectations at the middle school level;

(d) Exit middle school ready to meet academic expectations at the high school level; and

(e) Exit high school ready to meet academic expectations of postsecondary education and the workplace, with particular emphasis on literacy and mathematics. To provide extended programming for students who have been retained or who are at risk of being retained in a class or grade of failing to graduate on time or dropping out without additional assistance, and

(f) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age range.

(2) The extended school services provided to a student shall be planned, documented and evaluated through the intervention plan, at primary through grade 5, or in the student's Individual Learning Plan in grades 6 through 12. The instructional program for extended school services shall include:

(a) Diagnostic assessment to determine areas of highest academic need of the individual student (A method to assess the priority educational needs of each individual student and to determine the academic expectations to be exhibited by the student at the end of the program);

(b) Development of goals in consultation with classroom teachers, for eliminating the identified academic need, including timelines and specific measurable outcomes;

(c) Formative and summative assessments to facilitate student progress and to determine if the student has achieved the learning goals of the intervention plan;

(d) Instructional strategies that are varied and that do not replicate practices that have proven to be ineffective for the student in the traditional classroom;

(e) A plan for collaboration and consistent use of interventions among the teachers supporting the student in core academic classes and those providing supports through extended school services;

(f) Counseling and academic advising to remove barriers to achievement and;

(g) Regular communication with the parent or guardian (An appraisal-educational program designed for the individual student which assesses the student's mastering the academic expectations within the timelines specified by the program);

(h) Ongoing method of informal and formal assessment to document the student's progress toward mastery of the academic expectations;

(i) A schedule of services which shall be of the duration and regularity necessary to allow mastery of the academic expectations within a reasonable and projected timeline;

(j) Teaching strategies that provide support and continuity relative to the regular school program; and

(k) Varied instructional approaches which may include:

1. Tutorial instruction;

2. Computer assisted instruction; or

5. Counseling if needed to assist the student in overcoming social or behavioral problems that interfere with the student's academic success.

(3) The instructional program may utilize a variety of scheduling models including:

(a) Programs operated during the regular school day as provided in Section 7 of the administrative regulation;
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(b) Extended day programs which are scheduled any time outside of the regular school day [and which may include a night program];

c) Night programs;

d) Saturday programs [which operate for a full or half-day over a specified period of time];

e) Summer programs [which operate a full or half-day during the months of June, July, or August]; or

(f) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students;

(g) Programs operated during the regular school day as approved by the Commissioner of Education and that meet the criteria provided in Section 7 of the administrative regulations;

(h) The district’s comprehensive school improvement plan shall include examination of opportunities to collaborate with businesses, colleges, and community organizations to provide [supplemental-instructional] services and advising in off-campus [nursery] locations, as part of or aligned with the extended school service programs.

(i) Extended school service programs shall not supplant [replace or substitute for] the instructional time of the regular program, but shall extend time and provide differentiated opportunities to learn [provide additional instructional time] in a targeted content area and specific area of academic need.

(j) Certified staff, including administrators, teachers, and aides, shall plan, deliver, and evaluate extended school service programs [provide] instruction and support in collaboration as part of a student’s Individual Education Plan [or regularly supervise a noncertified tutor—including a peer tutor].

(k) Teachers providing instruction in extended school programs which are offered for academic credit for purposes of promotion or graduation shall meet the same professional qualifications as teachers who are employed in the regular school program.

(l) Teachers providing instruction in extended school programs shall be provided with professional development and continuing instructional strategies for meeting the needs of at-risk students and use of formative assessment strategies to monitor progress.

(m) Certified staff shall supervise noncertified tutors.

(n) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive these services until they graduate from the twelfth grade or become twenty-one (21) years of age, whichever comes first.

Section 3. Student Selection. [Selection of pupils to receive extended school services shall be as follows:] (1) Each district school shall select pupils as described in Section 2(1) of this administrative regulation who need additional instructional time [to attain academic standards]. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension. The needs of students in A5 and A6 programs, as defined in 792-KAR 5-001, shall be considered in the selection process.

(2) (a) Within its scope of authority, a local board of education or school council may mandate the participation of eligible students in extended school services through the adoption of a written policy, which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(b) (b) Conditions for attendance for extended school service shall include:

(1) Identification of the learning goals and benchmarks that, if achieved, indicate that the student may exit the extended school program;

(2) The characteristics of the students who will be required to attend;

3. A description of the criteria by which they may exit the extended school program or may no longer be required to attend;

4. The conditions under which a student’s absence may be considered excused or unexcused [targeted student may be excused from attendance], and

(c) The arrangements for transporting the students mandated to attend.

4) The local school board shall provide notice of the policy in the district’s annual extended school services program report which is submitted at the same time as the district’s comprehensive school improvement plan.

5) One (1) or more of (2) in assessing a student’s need for extended school services, the school shall consider the student’s performance in:

a) Academic skill areas for a single subject or single class, application of those skills to everyday life situations, and integration of skills and experiences to acquire new information;

b) School attendance if it negatively affects academic performance;

c) Patterns of promotion or retention;

d) Physical and mental readiness for learning, and

e) If applicable, readiness for transition to work, postsecondary education or the military.

4) The following methods of documentation shall be used to determine [verify] which students shall be [determined] eligible and in greatest need of extended school services:

a) Teacher recommendation [based upon classroom observation and anecdotal records or parent recommendation];

b) Academic performance data, including diagnostic, formative, interim, benchmark, or interim and benchmark assessments, and summative assessments;

c) Student performance on high school college entrance work for readiness assessments required by KRS 158.6455; or

d) Based upon analysis of outcomes and reports and formal and informal assessments and reports.

6) Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have a greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

7) A local school district shall solicit input from parents and the community to identify potential barriers to participation. Identified barriers shall be addressed through engagement with community partners or off-campus locations [location] of after school, weekend, or evening services.

5) Schools shall inform parents and guardians of extended school services which will be offered in the school setting including:

a) The rationale for offering extended school services, including data about academic achievement and further opportunities, opportunities for postsecondary education and training, and consequence for failure to succeed; the high school diploma [general educational development];

b) General information which describes the nature of the services to be offered including the opportunities for maintenance of performance, prevention of failure and reduction of academic deficiencies;

(c) A specific notification to parents or guardians of their child’s eligibility to receive or be assigned to extended school services, including the manner in which a personalized intervention plan and goals will be included as part of the student’s Individual Learning Plan to help ensure that the student is able to achieve the student’s academic and career goals [individual learning plan; A school shall maintain documentation of continuing and appropriate efforts to gain parental approval and support for students to attend the program offered outside of the school day]; and

(d) Written procedures for parents or guardians to request reconsideration of their child’s identification or lack of identification of eligibility for extended school services [outside of the school day].

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be made to the amount of the total appropriation less two (2) percent for state administrative costs.

(2) The commissioner of education shall determine the amount of the grant award for which each school district is eligible based upon the following division of funds:
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(a) One-half (1/2) of the total funds shall be distributed based on the most current average daily attendance (ADA); (b) One-sixth (1/6) of the total funds shall be distributed based on the most current rates of economic deprivation (ED); (c) One-sixth (1/6) of the total funds shall be distributed based on the most current dropout rates (DR); and (d) One-sixth (1/6) of the total funds shall be distributed based on the most current CATS Academic Indices (AI).

(3) Actual district allocations shall be calculated as follows: (a) Determine the state total for ADA by summing the ADA for all districts; (b) Determine the percentage each district shall receive for ADA by dividing the district’s ADA by the state total ADA. The resulting percentage (%) multiplied times the total funds available for average daily attendance shall equal [equals] the amount the district shall receive for ADA; (c) State totals for ED, AI, and DR shall be calculated as follows:

1. The state total for ED shall be the sum of all districts’ ED quotients. Each district’s ED quotient shall be calculated by multiplying the district’s ED times the district’s ADA;
2. The state total for AI shall be the sum of all districts’ AI quotients. Each district’s AI quotient shall be calculated by subtracting the AI from 100 and then multiplying the difference by the district’s ADA; and
3. The state total for DR shall be the sum of all districts’ DR quotients. Each district’s DR quotient shall be calculated by multiplying the district’s DR times the district’s ADA.

(4) The remaining percentage each district shall receive for ED by multiplying the district’s ED times the district’s ADA and divide the result by the state’s total ED, as determined by paragraph (c)(1) of this subsection. The resulting percentage (%) multiplied times the total funds available for economic deprivation shall equal the amount the district shall receive for ED;

(e) Determine the percentage each district shall receive for AI by multiplying the district’s AI times the district’s ADA and divide the result by the state’s total AI as determined by paragraph (c)(2) of this subsection. The resulting percentage (%) multiplied times the total funds available for academic indices shall equal the amount the district shall receive for AI;

(f) Determine the percentage each district shall receive for DR by multiplying the district’s DR times the district’s ADA and divide the result by the state’s total DR as determined by paragraph (c)(3) of this subsection. The resulting percentage (%) times the total funds available for dropout rate shall equal the amount the district shall receive for DR;

(g) Sum the district’s portions for ADA, ED, AI, and DR to determine the district’s total ESS allocation.

4) To ensure the opportunity for all school districts to provide effective extended school services on a secure and safe scope, a school district shall receive a grant of less than $15,000.

5) Grant awards shall be made to each school district upon approval by the commissioner of education of an application as prescribed in Section 5 of this administrative regulation. Regular grant funds shall be available for use by school districts for fifteen (15) months through September 30 of the last year of the grant period. All services shall be delivered by September 30 of the last year of the grant period and all expenditures shall be paid for extended school services by December 30 of the last year of the grant period.

(6)(a) Funds received for extended school services shall be expended for instructional and support services necessary to provide an effective program. (b) These services shall include salaries of personnel. (c) Transportation and staff development related to the provision of extended school services shall be permissible support services. Support may include expenditures for field trips which shall not exceed two (2) percent of the district’s allocation for students served by the extended school services program. (d) Funds for extended school services shall not be used for capital outlay or indirect costs. (e) School districts shall be authorized to enter into contractual arrangements if necessary to provide comprehensive extended school service programs.

(f) The funds may be expended for instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.

(g) Part of these funds may be used for up to three (3) percent of the district’s allocation for operation of plant for a summer extended school services program which shall be prorated if other programs are taking place at the same time and place.

(h) Part of these funds may be used for administrative costs which shall not exceed five (5) percent of the district’s allocation.

(i) Students shall not receive monetary compensation to attend the extended school services program.

(j) School districts shall have on file written criteria for the selection of personnel employed in extended school services and ensure staffing decisions are made to best meet the needs of students.

(k) The funds may be used for administrative costs which shall not exceed five (5) percent of the district’s allocation.

(l) Financial records for extended school services shall be maintained by each school district and shall be submitted to the Department of Education via the state technology system.

Section 5. Requesting Funds. (1) The request for the use of extended school services funds shall be submitted as part of the district’s comprehensive improvement plan.

(2) (a) District applications for funds shall be approved by the commissioner of education prior to the encumbrance or expenditure of funds for extended school services by any school district, including the contracting for personnel for extended school services.

(b) Approval of programs as described in each district’s comprehensive improvement plan, including program reports, and request for a waiver for alternative service delivery shall be based on this administrative regulation and KRS 158.070.

Section 6. Program Evaluation. School districts providing extended school services shall submit to the Department of Education:

1. Student data through the Student Information System and the Individual Learning Plan [STI-Program] at the end of the regular school term and any summer term in which funds are expended for extended school services;

2. [Separate written] Evaluation and evaluative data as approved in the waiver application, if the school district receives approval to implement extended school services during the regular school day;

3. [Comprehensive] Data relative to the effectiveness of the extended school service program, including [regular extended school service program and the daytime extended school service program including] (a) Pre- and post student qualitative and quantitative performance data; (b) Student attendance at extended school services; and (c) Promotion and graduation data resulting from participation in extended school services.

Section 7. Waiver for Alternative Service Delivery. The commissioner of education may consider a request for a waiver to operate a program during the school day or to use an alternative delivery format. A request for waiver shall include:

1. A rationale describing why a daytime program is needed [additionally] to the regular extended school services program, including specific data and documentation of previous efforts to serve individual students during the regular extended school program;

2. A description of the instructional program that meets the criteria established in Section 2 of this administrative regulation [and includes a schedule that ensures each participating student receives additional instructional time during the regular school day without missing instruction in the same or other assessed content area. The regular program teacher in collaboration with the teacher delivering extended school services shall set measurable goals and objectives for student and teacher performance, including formal and informal assessments that extend beyond classroom grades and CATS scores];

3. A description of the student selection process that meets the criteria in Sections 2 and 3 of this administrative regulation; and
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(4) Detailed, accurate budget using correct MUNIS codes. A person compensated with ESS funds shall devote his or her time to delivering ESS services during the time period for which he or she is being compensated with ESS funds; and

(5) Specific information related to program evaluation described in Section 6 of this administrative regulation. It shall include a continuous monitoring and evaluation plan to ensure the needs of individual learners are met.

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

JON E. DRAUD, Commissioner
JOSEPH E. BROTHERS, Chairperson
APPROVED BY AGENCY: October 14, 2008
FILED WITH LRC: October 15, 2008 at 8 a.m.
CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Merce Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARR5, February 9, 2009)

787 KAR 1:090. Unemployed Worker's Reporting Requirements

RELATES TO: KRS 341.350, 341.360[341.380, 342.360], 341.370, 341.380
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;
2. Unemployed because of a labor dispute in the establishment where he has been employed; or
3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete:

(a) An internet claim registration through the Web site provided by the agency for that purpose at https://uiclaims.dos.ky.gov/ebenefits/;
(b) A telephone claim registration through the call center provided by the agency for that purpose;

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Presenting all facts in support of the application.[1]

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for the failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one of the methods and within the time frames established[provided] in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.[1]

(b) Except as provided in paragraph (d) of this subsection, for the first two weeks of benefits claimed following the effective date of an initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period, except that a worker shall not claim benefits until thirteen (13) days after the day on which the worker filed the initial or reopened claim.[1]

(c) Except as provided in paragraph (d) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.[1]

(d) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim his benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the web site provided by the agency for that purpose at https://uiclaims.dos.ky.gov/ebenefits/ with the claim in which case the claim shall be completed before midnight on the Saturday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose with the claim in which case the claim shall be completed before midnight on the Sunday before the second week of the period claimed or the Friday before the second week of the period claimed.

(3) (a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;
2. Unavailability of those options due to technical problems; or
3. A physical or mental condition preventing the worker from using those options.
(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.
(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:
(a) The worker has definite recall rights within four (4) calendar weeks;
(b) The employer has a workforce of at least 100 workers at the time of the layoff;
(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and
(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment began.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:
(1) The worker's classification as established in Section 1(2) of this administrative regulation;
(2) The worker's individual employment and earning history; and
(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:
(a) The employer's failure to comply with 787 KAR Chapter 1;
(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or
(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.
(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The "Continued Claim Form", revised 10/95; and
(b) "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 220C, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RUSSELL L. SALSMAN
APPROVED BY AGENCY: November 5, 2008
Section 2. Requirements for Certification. (1) An applicant for certified installer shall:
(a) Submit to the department[office] a completed Form MHCI 3, Certified Installer Application;
(b) Pay an application fee of $100 to the department[office];
(c) Successfully complete fifteen (15) hours of an approved course of education;
(d) Provide written proof of regularly assisting in site preparation and installation functions:
1. Under the supervision of a certified installer;
2. For at least sixty (60) days; and
3. On at least five (5) homes;
(e) Pass the certified installer examination given by the department[office]; and
(f) Provide a certificate verifying current worker’s compensation insurance coverage, if the applicant is employed at the time of application.
(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.
(3) (a) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the office and request an amended certificate that[which] shall reflect the current status.
(b) If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or have[having] in its employ a certified installer until another certified person has become associated with that company.

Section 3. Renewal of Certification; Continuing Education. (1)(a) The installer certificate shall expire on the last day of the installer’s birth month.
(b) If an initial certificate is for a period of less than twelve (12) months, the fee shall be reduced on a pro rata monthly basis.
(2) A certified installer seeking to renew certification shall:
(a) Submit a completed application, Form DHBCMH 40-21, Certified Installer Renewal Application[MHCI-3], to the department[office];
(b) Pay a renewal fee of fifty (50) dollars; and
(c) Provide proof of at least five (5) classroom hours successfully completed during the year in a course offered by the Kentucky Manufactured Housing Institute.

Section 4. Minimum Requirements for Installations. A certified installer shall comply with KRS 227.570(3) by using the manufacturer’s instructions or ANSI A225.1, Manufactured Home Installations.

Section 5. Certified Installer Seal. (1) A certified installer who installs a manufactured or mobile home in accordance with the standards established[set forth] in this administrative regulation shall place a certified installer seal on the home.
(a) Certified installer seals shall be obtained from the department.
(b) The application shall be:
1. (a) Filed on Form DHBC MHCI 40-29, Application for Certified Installer Seals, and
2. (b) Accompanied by a fee of twenty-five (25) dollars for each seal.
(2) Recordkeeping. A certified installer shall:
(a) Maintain the following information, reported monthly to the Division of Building Code Enforcement, Manufactured Housing Section, by regular U.S. Mail, facsimile, or electronically, on Form DHBC MH 40-30, Monthly Certified Installer Certification, for each certified installation:
1. Unit serial number;
2. Certified installer seal number;
3. Date manufactured, if known;
4. Make of unit;
5. Installation date of unit; and
6. Name of consumer and address where the manufactured home is located.

(b) Retain the completed Form DHBC MH 40-30, Monthly Certified Installer Certification, for three (3) years; and
(c) Make a copy of the form available to a manufactured housing field inspector upon request.
(3) Application and placement of certified installer seals.
(a) Each certified installer seal consists of two (2) parts that[which] shall be affixed as follows:
1. One (1) part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home if elsewhere-located HUD label is not required; and
2. One (1) part shall be placed on the inside of the electrical panel in the manufactured home.
(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.
(4) Lost or damaged seals.
(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately. In writing, specifying:
1. The manufacturer;
2. The manufactured or mobile home serial number; and
3. The certified installer seal number, if known.
(b) A damaged seal shall be:
1. Promptly returned to the department; and
2. Replaced by the department for a fee[office at a cost] of twenty-five (25) dollars.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition[and]
(b) "Form MHCI 3, Certified Installer Application", September 2007[4]
(c) "Form DHBC MH 40-29, Application For Certified Installer Seals", December 2003;
(d) "Form DHBC MH 40-21, Certified Installer Renewal Application", February 2009[December 2008]; and
(e) "Form DHBC MH 40-30, Monthly Certified Installer Certification", December 2008.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Division of Fire Prevention, Manufactured Housing Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(As Amended at ARRS, February 9, 2009)

921 KAR 1:430. Child support administrative hearings.

RELATES TO: KRS Chapter 138, 15.05S, 154A.060(2)(a).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, or to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C.
666 requires each state to have in effect procedures to increase the effectiveness of the Child Support Enforcement Program. 45 C.F.R. 303.35 requires the agency administering the Child Support Enforcement Program to develop a procedure for administrative review of child support cases for individuals with complaints. [KRS Chapter 13B establishes the administrative hearing process to be used in the Commonwealth] KRS 135.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures used by the cabinet in the administration of the Child Support Enforcement Program.

Section 1. Availability of a Hearing. (1) An opportunity for an administrative hearing shall be provided to an individual aggrieved by an action or inaction:
(a) On the part of the Child Support Enforcement Program[Division of Child Support]; and
(b) That affects the child support case of the individual.
(2) An individual requesting an administrative hearing shall have the option to designate a representative to act on behalf of the aggrieved party for the hearing process, such as:
(a) Legal counsel;
(b) A relative; or
(c) Any other person.
(3) An administrative hearing shall be conducted by an administrative hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch. [In the county of residence for the appellant or child; or]
(b) By telephone or at an alternate location, if the appellant:
1. Is unable to travel; and
2. Requests alternate hearing arrangements at least five (5) calendar days in advance of the scheduled hearing.
(4) If the appellant or authorized representative speaks a language other than English, the cabinet shall ensure that interpreter services are provided for the administrative hearing.
(5) Child support enforcement staff shall schedule and hold an informal interview or conference with an aggrieved individual:
(a) Within ten (10) calendar days of receiving the individual’s hearing request;
(b) Prior to an administrative hearing being scheduled; and
(c) To attempt resolution of the dispute.
(6) If the informal conference does not resolve the issue, the hearing request shall be sent to the Families and Children Administrative Hearings Branch as specified in Section 2 of this administrative regulation for scheduling.

Section 2. Request for a Hearing. (1) An individual shall request an administrative hearing by:
(a) Completing and submitting a CS-180, Request for Administrative Hearing;
(b) Submitting a written request; or
(c) Making an oral request, which is then transferred into a written request within the timeframes specified in subsection (4) of this section.
(2) An administrative hearing request shall be submitted to the:
(a) Child support contracting official’s office in the appellant’s county of residence; or
(b) Child Support Enforcement[Division of Child Support’s] central office.
(3) The count of days specified in subsection (4) of this section shall begin from the date of:
(a) Issuance, if the notice is sent by first class mail; or
(b) Receipt, if the notice is personally served or sent by certified mail.
(4) A written request for an administrative hearing shall be considered timely if received by the cabinet within:
(a) Ten (10) calendar days of:
1. An income withholding notice;
2. A notice of intent to boot a vehicle, in accordance with KRS 205.754(5); or
3. A notice of intent to request a credit report, in accordance with KRS 205.7565;
(b) Fifteen (15) calendar days of a notice of withholding from unemployment insurance, pursuant to KRS 341.392 and 341.420;
(c) Twenty (20) calendar days of:
1. An initial notice of monthly support obligation, in accordance with KRS 405.440(4);
2. An order to withhold assets, in accordance with KRS 405.440(5); or
3. A request for denial or suspension of a license or certificate;
4. A lien notice, in accordance with KRS 205.745(8); or
5. A notice to place the obligor’s name on the delinquent listing;
(d) Thirty (30) calendar days of:
1. Modified notice of monthly support obligation, in accordance with KRS 405.450(5);
2. Notice that an obligation amount was reviewed without change, in accordance with KRS 405.450(5); or
3. Notice regarding the collection of past-due support in accordance with KRS 154A.060(2)(g), 205.712(17), and 205.769.
(5) In accordance with KRS 205.712(13), an individual shall be granted an administrative hearing based upon a mistake in fact, such as an incorrect:
(a) Person identified as an obligor; or
(b) Current or past due support obligation.
(6) An appellant or authorized representative may withdraw an administrative hearing request by submitting a written request to the:
(a) Families and Children Administrative Hearings Branch, as specified in Section 3 of this administrative regulation; or
(b) Child support enforcement officer that accepted the original request for an administrative hearing.

Section 3. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge an administrative hearing request.
(2) A notice of an administrative hearing shall:
(a) Comply with the requirements of KRS 138.050(3); and
(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
(c) Specify that the hearing request shall be dismissed if an appellant or the authorized representative fails to appear for an administrative hearing without good cause as specified in Section 4(3) of this administrative regulation.
(3) Pursuant to KRS 405.450(1), the cabinet shall schedule an administrative hearing within sixty (60) calendar days of an individual’s hearing request.
(4) An administrative hearing shall be conducted in accordance with KRS 138.080 and 138.090.
(5) An individual that fails to appear for a scheduled hearing shall receive notification to provide good cause within ten (10) calendar days.

Section 4. Denial or Dismissal of an Administrative Hearing Request. (1) A hearing request shall be denied or dismissed if the:
(a) Request is not based on a mistake of fact as specified in Section 2(3) of this administrative regulation;
(b) Request is untimely and good cause, as defined in subsection (3) of this section, is:
1. Not claimed; or
2. Found not to exist[ ];
(c) Appellant submits a written request to withdraw the administrative hearing request; or
(d) Appellant or an authorized representative fails to appear for the scheduled hearing without:
1. Notifying the cabinet prior to the hearing; or
2. Establishing good cause for failure to appear, as defined in subsection (3) of this section.
(2) A claim of good cause for an untimely hearing request or failure to appear at an administrative hearing shall be established within ten (10) calendar days of receipt of a notice to provide good cause.
(3) Upon receipt of a good cause claim, a hearing officer shall determine if the appellant:
(a) Was away from home during the entire filing period,
(b) Is unable to read or comprehend the right to request an administrative hearing on the notice received; (c) Moved, resulting in a delay in receiving or failure to receive the notice in the required time period; (d) Was suffering from a serious illness; (e) Was caring for an immediate household member who had a serious illness; or (f) Was not at fault for the delay of the request, as determined by the hearing officer. (4) The cabinet shall notify an appellant of the dismissal of an administrative hearing request by sending a recommended order of dismissal.

Section 5. Appellant’s Rights. (1) An appellant or an appellant’s legal representative shall have the right to examine and copy case material pertinent to the dispute before or during the hearing process in accordance with KRS 13B.090(3). (2) The cabinet shall release case information as specified in subsection (1) of this section to the appellant’s authorized representative if the appellant provides written authorization that is: (a) Signed in the presence of child support enforcement staff who shall also sign as a witness; or (b) Notarized. (3) An appellant or representatives shall have the right to: (a) Examine, prior to the hearing: 1. The list of witnesses to be called during the hearing; 2. Evidence to be presented at the hearing; and 3. Other information in the cabinet’s possession that pertains to the hearing; (b) Present witnesses or documents to support the appellant’s claim; and (c) Appeal the decision of the final order of the hearing to Circuit Court in accordance with KRS 13B.140.

Section 6. Obligation Pending a Hearing or Appeal. (1) If a hearing request is based on the dispute of: (a) An initial notice of monthly support obligation, the obligation shall be stayed until a final order of the Commissioner of the Department for Income Support [Community-Based Services] or designee is issued, in accordance with KRS 405.450(2); or (b) The findings of a modification review of an administratively established obligation, the amount of the existing obligation shall be: 1. Enforceable; and 2. Paid by the obligor pending receipt of the final order. (2) If the action taken on behalf of the Child Support Enforcement Program [Division of Child Support] is: (a) Upheld, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation; or (b) Found to be incorrect, the cabinet shall return to the obligor any overpayment made since the date the administrative hearing was requested. (3) If an appellant files an appeal of the final order with the Circuit Court, the appellant shall be obligated to pay the amount listed on the notice of monthly support obligation while the appeal is pending.

Section 7. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order that: (a) Summarizes the facts of the case; (b) Specifies the address where a party to the hearing may send an exception to the recommended order; and (c) Identifies that: 1. Findings of fact; 2. Conclusions of law; 3. Supporting evidence; and 4. Applicable state and federal laws and administrative regulations. (2) In accordance with KRS 13B.110, the hearing officer shall issue the recommended order to the Commissioner of the Department for Income Support [Community-Based Services] or designee within sixty (60) calendar days of the close of the hearing record. (3) A copy of the recommended order shall be sent to the:

(a) Appellant or representative; (b) Child support enforcement staff that attended the administrative hearing; and (c) Designated staff of the Child Support Enforcement [Division of Child Support]’s central office.

Section 8. Written Exceptions. (1) If a party to the hearing disagrees with the recommended order, the party may file a written exception with the Commissioner or designee. (2) A written exception shall: (a) Be filed in accordance with KRS 13B.110(4); (b) Be based on facts and evidence presented at the hearing; (c) Not refer to evidence that was not introduced at the hearing; and (d) Be served on the other parties that attended the administrative hearing.

Section 9. Final Order. (1) A final order shall be issued: (a) In accordance with KRS 13B.120; (b) By the commissioner or designee on behalf of the cabinet; and (c) Within ninety (90) calendar days of the recommended order, unless the recommended order is remanded in accordance with KRS 13B.120(4). (2) If the final order differs from the recommended order, the final order shall comply with KRS 13B.120(3).

Section 10. Incorporation by Reference. (1) "CS-180, Request for Administrative Hearing", edition 4092[4098], is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement, 790 Schenkel Lane, Frankfort, Kentucky 40601 [Community-Based Services, 275 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: December 12, 2008
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-7575.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at AARRS, February 9, 2009)

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.2003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administra-
tive regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside. Pub. L. 105-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky. This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.
(2) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with K-TAP requirements/hardship--the individual shall overcome to become employed and self-sufficient.
(3) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:
(a) Physical abuse that resulted in, or threatened to result in, physical injury to the individual;
(b) Sexual abuse;
(c) Sexual activity involving a dependent child;
(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;
(e) Threat of, or an attempt at, physical or sexual abuse;
(f) Mental abuse; or
(g) Neglect or deprivation of medical care.
(4)(G) "Benefit group" means a group composed of one (1) or more children and may include as a specified relative a person pursuant to Section 1(46) of this administrative regulation.
(5)(B) "Child" means an individual:
(a) Age fifteen (15) or under;
(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or
(c) Under age eighteen (18) and a high school graduate.
(6) "Concerned" means a hardship the individual shall overcome to become employed and self-sufficient.
(a) "Constant care" means adequate care for a family member living in the home by a work-eligible individual other than the time:
(a) The family member spends sleeping; or
(b) In which the family member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.
(2) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (2)(B) of this section.
(7)(B) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.
(8)(B) "Family member" means an individual:
(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or
(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).
(9)(B) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:
(a) Death of one (1) parent;
(b) Continued voluntary or involuntary absence of one (1) parent; or
(c) If both parents are in the home:
1. Physical or mental incapacity of one (1) parent; or
2. Unemployment of at least one (1) parent.
(10)(B) "Kentucky Works" means a program that assists in obtaining education, training, experience and employment necessary to leave public assistance.
(11)(B) "Minor teenage parent" means an individual who:
(a) Has not attained eighteen (18) years of age; and
(b) Is not married or is married and not living with the spouse; and
(c) Has a minor child in the applicant's or recipient's care.
(12)(B) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement that causes a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.
(13)(B) "Prior labor market attachment" or "PLMA" means the parent has earned net more than $1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.
(14)(B) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:
(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524 [et seq.];
(b) Granted asylum pursuant to 8 U.S.C. 1158;
(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157;
(d) Paroled into the United States pursuant to 8 U.S.C. 1182(a)(5) for a period of at least one (1) year;
(e) An alien whose deportation is being withheld pursuant to 1. U.S.C. 1253(a), as in effect prior to April 1, 1997; or 2. U.S.C. 1231(b)(3);
(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;
(g) An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522; or
(h) Battered or subjected to extreme cruelty in the United States:
1. By a:
2. If:
(a) Spouse or parent; or
(b) Member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and
2. If:
(a) The alien no longer resides in the household with the individual responsible for the battery or cruelty; and
(b) There is a substantial connection between the battery or cruelty and the need for the benefit; and
(c) The alien has been approved or has a petition pending for:
(i) Status as a spouse or child of a United States citizen pursuant to clause (i), (ii), or (iv) of 8 U.S.C. 1154(a)(1)(A)(i), (ii), or (iv); or
(ii) Classification pursuant to clause (i) or (ii) of 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or
(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1255(a); or
(3) [Un-aliens] A child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:
1. By a:
2. If:
(a) Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or
(b) Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced in the battery or cruelty; and
2. If:
(a) The alien no longer resides in the household with the individual responsible for the battery or cruelty; and
(b) There is a substantial connection between the battery or cruelty and the need for the benefit; and
(c) The alien has been approved or has a petition pending for:
(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A)(ii), (ii), or (iv); or
(ii) Classification pursuant to clause (i) or (ii) of 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or
(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1255(a); or
(i) An alien who is lawfully residing in Kentucky and is:
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1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303(d); or
3. The spouse or surviving spouse who is not remarried if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph;
4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or
5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age; or

(15)(146) *Qualifying parent* means the parent who meets

PLMA.

(16)(147) *Recipient* means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(17)(148) *Sanctioned individual* means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(18)(149) *Second chance home* means an entity that:
(a) Provides a minor teenage parent a supportive and supervised living arrangement; and
(b) Requires a minor teenage parent to learn:
1. Parenting skills, including child development;
2. Family budgeting;
3. Health and nutrition; and
4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(19)(150) *Severe form of trafficking in persons* is defined by 22 U.S.C. 7102(8).

(20)(149) *Striker* means an employed individual who is participating in:
(a) A work stoppage;
(b) A concerted slowdown of work; or
(c) An interruption of operations at his or her place of employment.

(21)(152) *Supplemental Security Income* or *SSI* means a monthly cash payment made pursuant to:
(a) 42 U.S.C. 1381 to 1396d(4) to the aged, blind and persons with a disability;
(b) 42 U.S.C. 1382; or
(c) 42 U.S.C. 1382.

(22)(163) *Unemployed parent case* or *UP case* means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(23)(154) *Work* means participation in a Kentucky Works activity pursuant to 921 KAR 2:370, Section 2(1)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adoptive, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child," pursuant to Section 1(5)(4) of this administrative regulation, shall be met for at least one (1) person in the home.

(2) Verification of school attendance, Form PA-33D, [*Child's Certification of School Enrollment/Attendance*], shall be required for:
(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or
(b) Minor teenage parent pursuant to Section 2001(14)(1) of this administrative regulation.

(3) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he or she is not attending because of:

(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

(4) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the K-TAP case shall furnish his or her Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:
(a) Is living in the state voluntarily and not for a temporary purpose; or
(b) Has entered the state with a job commitment or seeking employment; and
2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.
(b) A qualified alien, pursuant to Section 1(14)(16) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(14)(16) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;
2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;
3. An alien whose deportation is being withheld pursuant to:
   a. 8 U.S.C. 1235(b)(9), as in effect prior to April 1, 1997; or
   b. 8 U.S.C. 1231(b);
4. An alien who is lawfully residing in Kentucky and is:
   a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
   b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303(d); or
   c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;
   d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105; or
   e. A parent or a sibling of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;
5. An alien who is a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

(d) Failure of the parent or other adult applying for or receiving benefits to verify[sign-a] citizenship or alien status [delegation. Form PA-14, "Declaration of Citizenship or Alien Status"] shall cause the needs of the parent or other adult to be removed from the case.

Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(9)(40) of this administrative regulation.
(a) Field staff if the following criteria are met:
1. The parent declares physical inability to work;
2. The worker observes some physical or mental limitation; and
3. The parent:
   a. Is receiving SSI;
   b. Is age sixty-five (65) or over;
   c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;
   d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:
      i. Social Security Administration; or
      ii. Medical review team of the cabinet;
   e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested, and there is no visible improvement in condition;
   f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;
   g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;
   h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;
   i. Is recovering from surgery, illness, or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;
   j. Is on approved sick leave recovering from surgery, illness, or injury for the duration of the approved sick leave if the employer is holding the job for the individual’s return, as verified by the employer; or
   k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or
   l. The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:
(a) The claimant’s medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and
(b) Competent medical testimony relevant to whether:
1. A physical or mental disability, illness, or impairment exists; and
2. The disability, illness, or impairment is:
   a. Sufficient to reduce the parent's ability to support or care for a child; and
   b. Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:
(a) The claimant’s:
1. Age;
2. Employment history;
3. Vocational training;
4. Educational background; and
5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and
(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunity, the limited employment opportunity of an individual with a disability shall be taken into account as follows:
(a) Available-printed materials that provide information regarding available employment opportunity shall be researched;
(b) The local Office of Employment and Training office shall be contacted regarding accessible employment opportunity within the claimant's area of residence; and
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(e) The claimant shall be referred, if necessary, for further assessment of his or her abilities.

(9) A written report shall be made of the determination under this section.

(10) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 113(144) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

(a) Less than 100 hours in a calendar month; or

(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature, if the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attest to the amount of earnings pursuant to Section 113(144) of this administrative regulation [by signing a completed Form PA-1C Supplement D, "Qualifying Parent Eligibility"] with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section are met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for $500 of the $1000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2.370, Section 4(2)(4); or

2. Subject to Kentucky Works, pursuant to 921 KAR 2.370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits.

Section 11. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of the half-blood;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 12 of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child, as follows:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage is recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care.

(b) If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall

1. Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care if no other eligible child is in the benefit group.

(4) A specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his or her share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Eligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to 921 KAR 2016, Section 11.

Section 12. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or relative;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901 KAR 5070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;

2. Bible record;

3. Immigration record;

4. Naturalization record;

5. Church document, such as baptismal certificate;
6. Passport;
7. Military record;
8. U.S. Census record; or
9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:
(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;
(b) Provides substantiation of the erroneous information; and
(c) Provides a notarized statement or affidavit:
   1. Acknowledging the erroneous information; and
   2. Containing the correct information on the actual alleged parent.
(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 13. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.
(2) If a child who receives SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.
(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 14. Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.
(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 15. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3)(i)(iv).

Section 16. Assessment. A work-eligible individual, as defined by 45 C.F.R. 381.20(n), shall complete an assessment pursuant to 921 KAR 2:370.

Section 17. Kentucky Works. The technical requirements for participation in the Kentucky Works Program shall be pursuant to 921 KAR 2:370.

Section 18. Cooperation in Child Support Activities. (1) In cooperation with the Department for Human Services, the Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 11(1) of this administrative regulation, who has a parent absent from the home due to:
(a) Divorce;
(b) Desertion;
(c) Birth out-of-wedlock;
(d) Legal separation;
(e) Forced separation; or
(f) Marriage annulment.
(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant’s or recipient’s cooperation in child support activities that shall include:
(a) Identifying the noncustodial parent or obligor;
(b) Providing information to assist in the:
1. Location of the noncustodial parent or obligor;
2. Enforcement of a child support order; or
3. Review or modification of a child support order;
(c) Establishing paternity, if required;
(d) Establishing, modifying or enforcing a child support order; and
(e) Forwarding a child support payment received to the state’s centralized collection agency.
(3)(a) The cabinet shall inform the applicant or recipient of:
1. Requests additional information regarding the criteria for filing a claim; or
2. Revoke a good-cause claim for refusing to cooperate in a child support activity.
(b) The cabinet shall provide Form CS-333.1, "Facts About the Right to Claim Good Cause", to an applicant or recipient who:
1. Requests additional information regarding the criteria for filing a claim; or
2. Revoke a good-cause claim for refusing to cooperate in a child support activity.
(c) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:
(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:
1. Child; or
2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;
(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant’s or recipient’s cooperation;
(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant’s or recipient’s cooperation;
(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release the child(ren) for adoption if:
1. Discussion has not gone on for more than three (3) months; and
2. The cabinet believes it would be detrimental to the child to require the applicant’s or recipient’s cooperation.
(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, "Good Cause Claim/Determination[6]", is filed to provide evidence to substantiate the claim.
(a) Evidence used to determine good cause shall include:
1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;
2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;
3. Record or other evidence indicating the noncustodial parent, or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;
4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption, and the issue has not been pending more than three (3) months; or
5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that provides the basis for the good cause claim.
(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:
1. The present emotional state of the individual subject to emotional harm;
2. The emotional health history of the individual;
3. The extent and probable duration of the individual’s emotional impairment; and
4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.
(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted, the cabinet shall conduct an investigation if it is believed that:
1. Corroboration evidence is not available; and
2. The claim is credible without corroborative evidence.
   (d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support, unless the contact is necessary to establish the good cause claim.
   (e) If it is necessary for the cabinet to contact the noncustodial parent, or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:
      1. Obtain permission for the contact; or
      2. Enable the applicant or recipient to:
         a. Present additional evidence or information so that the contact shall be unnecessary;
         b. Withdraw the application for assistance or request discontinuance of K-TAP;
         c. Have the good cause claim denied.
   (6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:
      (a) Document the case;
      (b) Determine that good cause:
         1. Exists and a support activity cannot be initiated without endangering the:
            a. Best interests of the child; or
            b. Physical or emotional health of the child or the relative; or
         2. Does not exist;
      (c) Advise the applicant or recipient in writing, Part II of Form PA-121, [G]ood Cause Claim/Determination[5], of the result of the good cause claim determination; and
      (d) Identify that the good cause is established, but may be subject to change, for subsequent review.
   (7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not considered to be met by the cabinet[6]:
      (a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 821 KAR 20-216[7]; and
      (b) The cabinet shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.
   (8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he or she will cooperate, the cabinet shall:
      (a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he or she will cooperate and verification of cooperation is provided timely; and
      (b) [Remove the protective payee from the case] and
      (c) Not authorize a back payment for the period the Individual did not cooperate.
   As a condition of eligibility for assistance, each applicant for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:
      (a) Include all members of the case for whom support rights apply; and
      (b) Be completed at the time of application for K-TAP benefits.

Section 19[19] Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.
(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

Section 20[19] Minor Teenage Parents. (1) A minor teenage parent under the age of eighteen (18) living with the spouse shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:
   (a) A minor child at least twelve (12) weeks of age in his or her care; and
   (b) Not completed a high school education (or its equivalent).
   (2) Except pursuant to subsection (4) of this section, a minor teenage parent and his or her minor child shall reside in:
      (a) A place of residence maintained by:
         1. A parent;
         2. A legal guardian; or
         3. An adult relative pursuant to Section 11 of this administrative regulation; or
      (b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and barriers[economic] of the minor teenage parent.
   (3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:
      (a) Minor teenage parent does not have a:
         1. Parent, legal guardian, or appropriate adult relative pursuant to Section 11 of this administrative regulation who is living or whose whereabouts is known; or
         2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 11 of this administrative regulation who:
            a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and
            b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 11 of this administrative regulation; or
      (b) Cabinet determines:
         1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or
         2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm to the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.
   (4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:
      (a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 11 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or
      (b) The minor teenage parent's current living arrangement is appropriate.
   (5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and barriers[economic] of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.
   (6) The minor teenage parent shall complete an assessment, in accordance with 921 KAR 2.370(a)-"Teen Parent-Personal Responsibility Plan", form PA-202TP.
   (7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment to a protective payee shall continue for the eligible child of the minor teenage parent.
   (8) Even if exemption criteria are[as] met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and the[his or her] child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 11 of this administrative regulation, second chance home, or maternity home, shall be considered an adult regarding benefit time limits pursuant to Section 21[26] of this administrative regulation.

Section 21[26] Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619, shall not be provided for more than sixty (60) cumulative months to a benefit group that includes:
   (a) An adult;
   (b) A minor teenage parent pursuant to Section 20[19](8) of this administrative regulation; or
   (c) A fugitive or drug felon not eligible pursuant to Section 22[27] or 24[28] of this administrative regulation.
(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:
(a) is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 25[24](1)(b) of this administrative regulation;
(b) is a work-eligible individual in the benefit group, who the cabinet determines has a physical or mental disability, as established in Section 9(3) of this administrative regulation. During the extension period, the individual shall comply with:
1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(12) and 4(2); and
2. Child support cooperation requirements pursuant to Section 18[14](7) of this administrative regulation;
(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), is a parent providing [consistent care] for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 18[14](7) of this administrative regulation;
(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:
1. Child support cooperation requirements pursuant to Section 18[14](7) of this administrative regulation; and
2. Except for a caretaker relative age sixty (60) or over, Kentucky Works requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;
(e) Is an adult with insufficient employment opportunities, who:
1. Has complied with;
   a. Kentucky Works requirements pursuant to 921 KAR 2:370; and
   b. Child support cooperation requirements pursuant to Section 18[14](7) of this administrative regulation; and
2. During the extension period, shall:
   a. Comply with:
      (i) Kentucky Works requirements pursuant to 921 KAR 2:370;
      (ii) Child support cooperation requirements pursuant to Section 18[14](7) of this administrative regulation;
      (iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, Incorporated by reference in and pursuant to 921 KAR 2:370, Section 4(2); and
      (iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3)(4)(4); and
   b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and
   c. Shall be limited to an extension period of six (6) consecutive months; or
   (f) Received a domestic violence extension pursuant to Section 25[24](2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence extension.
2. During the extension period, the individual shall comply with:
   a. Child support cooperation requirements pursuant to Section 18[14](7) of this administrative regulation; and
   b. Kentucky Works requirements pursuant to 921 KAR 2:370.
(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.
(4) A benefit group that receives an extension to the sixty (60) months time limit shall be required:
(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;
(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;
(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section, or
(d) Annually for an extension pursuant to subsection (2)(d) of this section.
(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.
(6) A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.
(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:
(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and
(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.
(8) A benefit group shall not be provided to a benefit group, pursuant to Section 21(1) of 921 KAR 2:016, that includes an adult, or minor teenager parent pursuant to Section 20(14)(9) of this administrative regulation, who has:
1. Received six (6) cumulative months of K-TAP assistance from a federally funded program pursuant to 42 U.S.C. 601 to 619; and
2. Been penalized for failure to cooperate in Kentucky Works, pursuant to 921 KAR 2:370, for a period of three (3) cumulative months.
(b) An adult or minor teenager parent in paragraph (a) of this subsection shall receive assistance if the individual:
1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;
2. Meets the technical requirements established in this administrative regulation; and
3. Meets the standard of need in accordance with 921 KAR 2:016.
(9) Time limitations shall apply to a:
(a) Sanctioned individual; or
(b) Penalized individual.

Section 22[24] Receiving Assistance in Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:
(a) A program pursuant to:
1. 42 U.S.C. 601 to 619,
2. 42 U.S.C. 1326; or
3. 7 U.S.C. 2011 to 2036; or
(b) Benefits received under supplemental security income.
(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.
(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 23[122] Fugitive Felons. (1) K-TAP assistance shall not be provided to an individual:
(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or
(b) Violating a condition of probation or parole imposed under federal or state law.
(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.
(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

Section 24[133] Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in Kentucky Works in accordance with 921 KAR 2:370.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:
1. Be developed by a person trained in domestic violence;
2. Reflect the individualized assessment and a revision made by a redetermination;
3. Include appropriate referral to counseling and supportive services based on the needs and barriers [someone] identified in the individualized assessment, as determined by the cabinet;
4. Be designed to lead safely to employment; and
5. Be completed no less often that every six (6) months.
(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to:
(a) Residency requirements pursuant to Section 5 of this administrative regulation;
(b) Child support cooperation requirements pursuant to Section 18 [47] of this administrative regulation;
(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 21 [28] of this administrative regulations;
(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 26 [26] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "PA-4C-Supplement B- Qualifying-Parent-Eligibility", edition 10/06;
(b) "PA-14, Declaration of Citizenship- or Alien-Status", edition 10/06;
(c) "PA-33D, Child's Certification of School Enrollment-Attendance", edition 10/06; and
(d) "PA-121, Good Cause Claim/Determination", edition 10/06;
(e) "PA-202TP, Teen-Parent-Parental-Responsibility-Plan", edition 10/06;
(f) "CS-333, Facts-About-The-Child-Support-Program-For-K-TAP-And-Kinship-Care-Recipients", edition 6/06; and
(g) "CS-333.1, Facts-About-The-Right-To-Cash-Good-Cause", edition 6/06.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 9, 2008
FILED WITH LRC: October 10, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A pub 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.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, February 9, 2009)


STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619, Pub. L. 109-171, Necessity, Function, and Conformity; KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant 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. 501 to 619, and federal regulations. KRS 205.203 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 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) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.
(3)(6) "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)(9) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.
(5)(4) "Assistance" is defined by 45 C.F.R. 260.31.
(6)(9) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with K-TAP requirements/barriers, the individual shall address (overcome) to become employed and self-sufficient.
(7)(6) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).
(8)(7) "Concerns" means a hardship-including the individual shall overcome to become employed and self-sufficient.
(9)(8) "Conclusion" means a process in which a participation problem in the Kentucky Works Program can be resolved.
(10)(9) "Consent-care" means active care for a family member living in the home by a work-eligible individual other than the:
(a) The family member's spouse or
(b) in whic the family member is in full-time school attendance or in a program or activity outside the home unaccompanied by the individual.
(9)(10) "Disability" is defined by 42 U.S.C. 12102(2)(A). In accordance with 42 U.S.C. 12102(2), major life activities include mobility, communication, self-care, self-direction, interpersonal skills, work, academics, and major life activities include work tolerance, or work skills.
(10)(11) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.
(10)(14) "Family member" means an individual:
(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(h), in the benefit group; or
(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(11)(42) "Full-time school attendance" means a workload of at least:
(a) The number of hours required by the individual program for participation in:
1. An adult basic education program;
2. A general educational development (GED) program; or
3. A literacy program;
(b) The number of hours required by the individual program for participation in a college or university;
(c) A semester system in a college or university of:
1. Twelve (12) semester hours or more; or
2. Six (6) semester hours or more during the summer term;
(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)(40) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(13)(44) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(j).

(14)(46) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child pursuant to 921 KAR 2 006, Section 1.

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

(16)(47) "On-the-job training" is defined by 45 C.F.R. 261.2(j).

(17)(48) "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.

(19) *Reasonable distance* means the distance customarily available within a locality.

(20)(49)(20) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).

(21)(50)(21) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

(22)(23)(22) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care needs as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(23)(24)(23) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(l).

(24)(25)(24) "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.

(25)(26)(25) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

(26)(27)(26) "Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

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

(a) A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (b) 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) of this subsection or in literacy or adult education.

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

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents [with the number of hours required of each parent as follows:
   a. Thirty-five (35) hours per week for one (1) of the parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c) 9, and 11 of this subsection in literacy or adult education;
   b. Twenty (20) hours per week for the other parent, with all twenty (20) hours in an education activity pursuant to paragraph (c) 1 through 4 and 6 of this subsection.

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

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2 006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2 006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

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

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment [progressing-evaluating], 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-evaluating], as defined by the educational institution or program, in post secondary 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(l).
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. Educational counseling;
   f. Literacy [or]
   g. Adult education; or
   h. Another preparation or service;

(i) To address an individual’s barriers; and
(ii) Approved in advance by the cabinet; 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 200, Wage Supplementation Program Participant Agreement".

(2) Excused absences shall:
Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:
(a) Is a head of household;
(b) Has not obtained a high school diploma or a GED;
(c) Has not attained twenty (20) years of age; and
(d) Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month;
(2) Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.
(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) 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.
(4) 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 KRS 205, K-TAP Transitional Assistance Agreement.
(5) A work-eligible individual shall be considered to be engaged in work for a month if the individual:
(a) Only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and
(b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c) 1. 2. 3. 4. 5. 6. 7. or 8. of this administrative regulation.
(6) In accordance with 45 C.F.R. 261.2(n)(2)(ii)(A)(1), the cabinet shall exclude from program participation an individual providing [caretaker] care[for more than eight (8) consecutive weeks] to a disabled member as verified by the completion of the [PA-4, Statement of Required Caretaker Services].
(7) In accordance with 45 C.F.R. 261.2(n)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.
(8) If an individual with an ADA disability cannot participate in a countable work activity as specified in Section 2 of this administrative regulation, the cabinet shall provide a reasonable accommodation or program modification based on the abilities and barriers of the individual.
(b) A reasonable accommodation or program modification may include:
1. Excused participation from an activity;
2. Participation for a reduced number of hours;
3. Participation in an activity for a longer period of time than is accountable; or
4. Participation in an activity that is not countable in accordance with Section 2(1)(e)(12) of this administrative regulation.
(9) 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.
(10) 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 for an individual with an ADA disability.
(2) The cabinet shall request other agencies to assist in the assessment process as needed.
(e) The assessment shall include consideration of:
1. Basic skills;
2. Occupational skills;
3. Barriers and other relevant factors.
(3) 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;
(e) Other needs of the family.
(4) A work-eligible individual shall be notified of a referral to a specific Kentucky Works Program activity in writing on form:
(a) KW-105, Kentucky Works Referral Form (Participant);
(b) KW-216, New Chances Referral Form; or
(c) KW-246, WEP Referral Form.
In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work [using form [PA-511, Workforce Kentucky Customer Registration]] except for a member who is:
(a) Under age eighteen (18);
(b) Age sixty (60) or over;
(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to KRS 201.158, Section 2;
(d) Receiving benefits based on 100 percent disability;
(e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
(f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:
(a) At the request of a work-eligible individual or a Kentucky Works participant;
(b) At the request of a service provider;
(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.
(2) The conciliation shall be conducted by the cabinet or its designee.
(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with Kentucky Works participation.

4(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form [3][KW-204, Conciliation Notice [Contact]].

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.

(5) At the conclusion of the conciliation period, the participant shall be notified in writing of an adverse action in accordance with 921 KAR 2 046 [the results of the conciliation on form 'KW-206: Conciliation Results'].
(5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET-241, WEP Training Site Agreement [*KWET-240, Work Experience Training Program Participant Agreement*].

(6) A training site agency shall:
(a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet;
(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:
   1. Hours of nonoverime work,
   2. Wages; or
   3. Employment benefits;
(c) Comply with 42 U S C. 12101 to 12213;
(d) Report a personnel problem to the departmental representative designated by the cabinet;
(e) Maintain accurate time and attendance records daily for a WEP participant;
(f) Verify time and attendance records for a WEP participant pursuant to Section 2(3) of this administrative regulation [en-Form PA-33], to ensure the WEP participant's compliance with subsection (7) of this section;
(g) Grant access to the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;
(h) Immediately report an injury to the designated representative;
(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;
(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;
(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to [the *KWET-241, WEP Training Site Agreement*], except as authorized by law or in writing by a WEP participant;
(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;
(m) Provide:
   1. Sufficient training to ensure development of appropriate skills;
   2. New task after mastery of a skill; and
   3. Adequate participation instruction and supervision at all times;
(n) Provide the participant a safe training place;
(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 657, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;
(p) Provide adequate material to complete a training activity in a safe environment; and
(q) Sign form KWEP-241 with the cabinet and the participant containing a statement of:
   1. The conditions established by subsections (1) through (10) of this section; and
   2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(3) of this administrative regulation completed monthly in accordance with subsection (6)(a) and (f) of this section [form PA-23], completed monthly by the WEP provider pursuant to subsection (6)(a) and (f) of this section.

(8) If an amendment is made to the agreement, a new form KWET-241 shall be issued [Changes to the KWET-241 shall be established in writing on form KW-244, WEP Training Site Agreement Amendment].

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241 [KW-245, Notice of WEP Discontinuance].

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) KW-105, Kentucky Works Reforms Form (Participant), edition 10/06;
(b) KW-200, Kentucky Works Assessment Form*, edition 2/09 [4/06];
(b)(c) KW-202, K-TAP Transitional Assistance Agreement*, edition 2/09 [4/06];
(b)(d) KW-204, Conciliation Notice/Contact*, edition 2/09 [4/06];
(b)(e) KW-205, Conciliation Results*, edition 10/06;
(b)(f) KW-211, Noncompliance Notice*, edition 10/06;
(b)(g) KW-230, Wage Supplementation Program Participant Agreement*, edition 10/06;
(b)(h) KW-241, WEP Training Site Agreement Amendment*, edition 10/06;
(b)(i) KW-245, Notice of WEP Discontinuance*, edition 10/06;
(b)(j) KW-246, WEP Reforms Form*, edition 10/06;
(b)(k) KW-240, Work Experience Training Program Participant Agreement*, edition 10/06;
(b)(l) KW-241, WEP Training Site Agreement*, edition 10/06;
(b)(m) PA-4, Statement of Required Caretaker Services*, edition 10/06 [4/06];
(b)(n) PA-33, Verification of Kentucky Works Participation [Transportation and Participation in Education or Training Activity], edition 2/09 [4/06];
(b)(o) PA-33N, Second Notice Verification of Transportation and Participation in Education or Training Activity*, edition 10/06;
(b)(p) PA-216A, New Beneficiary Reforms*, edition 10/06; and
(b)(q) PA-611, Workforce Kentucky Customer Registration*, edition 10/06.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: 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 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7505, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, February 9, 2009)

921 KAR 3:035. Certification process.

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 273.10

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Food Stamp Program within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to quality for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a
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household's circumstance for the entire period for which each household is certified.
(2) Certification criteria shall be applicable to all households.
(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.
(2) Except as provided in subsections (3) and (4) of this section, a household shall be certified for at least six (6) months.
(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:
1. Expedite benefits in accordance with 7 C.F.R. 273.2(1); and
2. Postpone verification.
(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twelve (12) month certification as specified in subsections (2) and (4) of this section.
(c) A household shall be certified for twelve (12) months if all members:
1. Are either elderly or have a disability, as defined in 921 KAR 3 010; and
2. Have no earned income.

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:
1. Notice of eligibility;
2. Notice of denial; or

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3 030, Section 1, as follows:
1. If a household files the application:
   (a) By the 15th day of the last month of the certification, the cabinet shall:
      1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and
      2. Provide uninterrupted benefits, if the household is otherwise eligible; or
   (b) After the 15th day but prior to the last day of the last month of the certification, the cabinet shall:
      1. Allow the household thirty (30) days to return verification or complete a required action; or
      2. If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures.
1. A household with a self-employed member shall have its case processed as follows:
   (a) Income is annualized over a twelve (12) month period, if self-employment income:
      1. Represents a household's annual income; or
      2. Is received on a monthly basis which represents a household's annual support.
   (b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.
   (c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.
2. The cabinet shall calculate the self-employment income on anticipated earnings if the:
   1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
   2. Household has experienced a substantial increase or decrease in business.
(2) A household with a boarder shall have its case processed as follows:
   (a) Income from the boarder shall:
      1. Be treated as self-employment income; and
      2. Include all direct payments to the household for:
         a. Room;
         b. Meals; and
         c. Shelter expenses.
   (b) Deductible expenses shall include:
      1. Cost of doing business;
      2. Twenty (20) percent of the earned income; and
      3. Shelter costs.
(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as follows:
   (a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.
   (b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.
   (c) The ineligible member shall not be included:
      1. Assigning benefit levels;
      2. Comparing monthly income with income eligibility standards; and
      3. Companing household resources with resource eligibility standards.
   (4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows:
      (a) All resources of an ineligible member shall be considered available to the remaining household members.
      (b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(6), of the ineligible member's income shall be attributed to remaining household members.
      (c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.
      (d) The ineligible member's share of dependent care and shelter expenses shall not be counted.
   (e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.
3. A household with a nonhousehold member shall be processed as follows:
   (a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.
   (b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:
      1. Count that portion due to the household as earned income, if identifiable; or
      2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.
   (c) A nonhousehold member shall not be included in the household size, determining the eligibility and benefits for the household.
   (d) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as follows:
      (a) An eligible household shall include:
         1. A narcotic addict; or
         2. An alcoholic; and
         2. A child of the narcotic addict or alcoholic.
      (b) Certification shall be accomplished through use of the facility's authorized representative.
      (c) Food stamp processing standards and notice provisions shall apply to a resident recipient.
(d) A treatment center shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the center, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The organization or institution shall be responsible for knowingly misrepresenting a household circumstance.

(7) The following case processing procedures shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2:

(a) Application shall be made by a resident [shall apply on his or her behalf] or through use of the facility's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies [on his or her behalf], the household shall report a change in household circumstance to the cabinet; or
2. If the group living arrangement acts as an authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applies on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(f) A case of a resident in a shelter for battered women and children shall be processed as follows:

(a) The shelter shall:
   (1) Have FNS (Food and Nutrition Service - FNS) authorization to redeem food benefits at wholesalers; or
   (2) Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2(1).

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(1)[a]-[e].

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as follows:

(a) An Application may be filed at:
   1. Social Security Administration (SSA) Office; or
   2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 3 of this administrative regulation.

(f) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored alien.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:
   a. Include total monthly earned and unearned income; and
   b. Be reduced by:
     (i) The twenty (20) percent earned income disregard, if appropriate; and
     (ii) The Food Stamp Program's gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 721 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be [re] prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(6);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2024.

Section 6. Disaster Certification. The cabinet shall distribute emergency food stamp benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5129 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) [A household does not meet criteria specified in Section 2(2) of this administrative regulation.]

[a household shall be required to report] Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130% of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirement, as specified in 721 KAR 3:025, Section 3(6)(a)(i)(ii)(8)(b), to work less than twenty (20) hours per week.

2. [If a certified household meets criteria in Section 2(4) of this administrative regulation, the household shall report a change in circumstance within ten (10) days of the date the change becomes known to the household.

3. An applying household shall report a change related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services
Division of Family Support
(As Amended at ARRS, February 8, 2009)

921 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d), 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Food Stamp Employment and Training Program. 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. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program (E&T).

Section 1. Definitions. (1) Employment and training program—E&T means a program with work experience, education, or
training components, designed to assist able-bodied food stamp recipients in obtaining employment and becoming self-sufficient. (9) "Exempt" means excused by the agency from participation in the E&T.

24(9) "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

24(104) "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work requirements as specified in subsection (4) of this section, a household member [in subsection (4) of this section] shall register for work:

(a) At the time of initial application for food stamps; and
(b) Every twelve (12) months following the initial application.
(2) Work registration shall be completed by the:

(a) Member required to register; or
(b) Person making application for the household.
(3) Unless otherwise exempt, a household member excluded from the food stamp case shall register for work during periods of disqualification. An excluded person may be an:

(a) Ineligible alien; or
(b) Individual disqualified for:
   1. Refusing to provide or apply for a Social Security number; or
   2. An intentional program violation.
(4) An Individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.
(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).
(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;
(b) In accordance with 7 C.F.R. 273.7(a)(1)(v), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or
(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, if assigned by the cabinet.
(7) A household member making a joint application for SSI[-as defined in 421 KAR 3:040] and food stamps in accordance with 821 KAR 3:036 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).
(8) The E&T worker shall explain to the food stamp applicant the:

(a) Work requirements for each nonexempt household member;
(b) Rights and responsibilities of the work-registered household members; and
(c) Consequences of failing to comply.

Section 3. E&T Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T Program.
(2) An E&T participant shall:

(a) Attend and complete an initial assessment interview;
(b) Be placed in:
   1. VEST; or
   2. WEP; and
(c) Receive a reimbursement for actual expenses incurred while participating in the E&T Program up to twenty-five (25) dollars per-month, if otherwise eligible; and
(4) Complete and return to the cabinet a FSET-108, [Job Search Contact Report]*, or a FSET-145, [Employment and Training Program Activity Report], in order to verify participation [and be reimbursed for participation expenses, as specified in paragraph (c) of this subsection].
(5) Payment for transportation, up to twenty-five (25) dollars per-month, shall be provided to an individual participating in the E&T program if the individual:

(a) Incurs or plans to incur a transportation expense in order to participate; and
(b) Completes and returns to the cabinet a FSET-109 or a FSET-145 stating the anticipated need [a participant who withdraws or is terminated, voluntarily or involuntarily, from the program, shall:

(a) Be provided with a FSET-119, Food Stamp Employment and Training Program Notification of Termination; and
(b) Complete and file the FSET-119 or other documentation of expenses with the cabinet in order to be reimbursed in accordance with subsection (2)(c) of this section.

Section 4. Components. (1) A county offering the E&T Program shall offer the following services and activities:

(a) The VEST Program consisting of:
   1. Vocational school; or
   2. On-the-job training; and
(b) The WEP Program consisting of:
   1. Job search; and
   2. Work placement.
(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and
(b) Participate in the WEP component until a VEST placement is available.
(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;
(b) Participate in the initial thirty (30) days of job search;
(c) Complete and file with the cabinet the FSET-108;
(d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and
(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(6), by:

1. Accepting the offer of a work site placement; and
2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.
(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(6), shall be determined by the participant's monthly food stamp allotment divided by the current federal minimum wage. [Comparing the monthly food stamp allotment to the Work Experience Program Table, incorporated by reference in this administrative regulation.]
(5) The food stamp households' active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(6), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:

(a) [Dividing the] Food stamp allotment by the number of individuals who are subject to the work requirement; and
(b) Individual pro rate share of the food stamp allotment by the current federal minimum wage. [Comparing the individual pro-rate share of the food stamp allotment to the Work Experience Program Table.]

Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:

(a) The participant shall be mailed a FSET-102 ["Conciliation Contact and Request for Information"] form; and
(b) A conciliation period shall be initiated.
(2) The conciliation period shall be used to:

(a) Determine the reason for the noncompliance; and
(b) Allow the participant the opportunity to resolve the problem in order to continue participation.
(3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:

(a) Determine if the participant demonstrates good cause for noncompliance;
(b) Encourage the participant to resume an E&T Program activity; and
(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.
(4) If the participant resumes the E&T Program activity, a disqualification [sanction] shall not be imposed.

(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:
(a) Work registrant has failed to comply with:
    1. Work registration requirements as established in Section 2 of this administrative regulation; or
    2. E&T requirements as established in Section 3 of this administrative regulation; or
(b) Household member has, as described in Section 9 of this administrative regulation, voluntarily:
    1. Quit a job; or
    2. Reduced his work effort.
(2) In accordance with 7 C.F.R. 273.7(l)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:
(a) Illness of the individual;
(b) Illness of another household member requiring the presence of the individual;
(c) A household emergency;
(d) Unavailability of transportation; and
(e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.
(3) Good cause for leaving employment shall be granted if:
(a) A circumstance specified in subsection (2) of this section exists;
(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(n); or
(c) A circumstance specified in 7 C.F.R. 273.7(l)(3) exists.

Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of food stamp benefits if [when] the participant [Disqualification shall be imposed on a household member who]:
(a) [1. Is a mandatory participant; and
(b) Fails to comply with the work registration or E&T program requirements; or
(c) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.
(2) An individual disqualified from participation in the Food Stamp Program shall be Ineligible to receive food stamp benefits until the latter of the:
(a) Date the individual complies; or
(b) Lapse of the following time periods:
    1. Two (2) months for the first violation;
    2. Four (4) months for the second violation;
    3. Six (6) months for the third or a subsequent violation.
(3) Ineligibility shall continue until the ineligible member:
(a) Becomes exempt from the work registration; or
(b) Serves the disqualification period specified in subsection (2) of this section; and
(2) Complies with the requirements of:
   a. Work registration; or
   b. The Employment and Training Program.
(4) A disqualified household member who joins a new household shall:
(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section; and
(b) Have income and resources counted with the income and resources of the new household, and
(c) Not be included in the household size [when] determining the food stamp allotment.

Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for food stamps or any time after application, an individual shall not be eligible to participate in the Food Stamp Program if the individual voluntarily and without good cause:
(a) Quits a job;
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Food Stamp Program to the state agency. The administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to the Food Stamp Program for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular Food Stamp Program benefits" means food stamp benefits received in accordance with the procedures specified in:
(a) 921 KAR 3.020, Financial Requirements;
(b) 921 KAR 3.025, Technical Requirements;
(c) 921 KAR 3.030, Application Process; and
(d) 921 KAR 3.035, Certification Process.
(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.
(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional food stamp program for SSI participants who are age sixty (60) or older.
(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a food stamp program requirement is specified in this administrative regulation, all food stamp program requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:
(1) A fair hearing;
(2) An administrative disqualification hearing;
(3) An appeal;
(4) A disqualification;
(5) A claim and collection of a claim; and
(6) EBT Issuance [Electronic Benefit Transfer, or "EBT", issuance.]

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:
(a) Is a Kentucky resident;
(b) Is:
1. A current SSI recipient; or
2. SSI eligible, but SSI benefits are currently in suspense;
(c) Is age sixty (60) or older;
(d) Is not institutionalized;
(e) Is:
1. Single, widowed, divorced, or separated; or
2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
(f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3.010.
(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.
(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:
(a) Shall not be eligible for SAFE; and
(b) May apply for regular Food Stamp Program benefits in accordance with 921 KAR 3.030.
(4) An individual who meets[Meeting] the criteria of subsection (1) of this section may apply[shall not prohibit] an individual from applying for regular Food Stamp Program benefits instead of SAFE benefits.
(5) An individual shall not receive SAFE benefits and regular Food Stamp Program benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:
(a) Identify SSI participants who are potentially eligible for SAFE; and
(b) Mail each identified SSI household a SF-1, "Simplified Assistance for the Elderly (SAFE) Application". and a return envelope.
(2) A SAFE application shall be considered filed if the SF-1 is:
(a) Signed; and
(b) Received at the Department of Community Based Services, Division of Family Support, Office of Nutrition Assistance and Accountability, 38 E. Main Street, Frankfort, Kentucky 40621.
(3) In accordance with 7 C.F.R. 273.2(c), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.
(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, "Simplified Assistance for the Elderly (SAFE) Recertification Form."
(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.
(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.
(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service.
(2) The standard SAFE benefit amounts shall be based on:
(a) Shelter costs;
(b) Household size; and
(c) The average benefits received by a similar household in the regular Food Stamp Program.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.
(2) The cabinet shall process changes in household circumstances based on information received from SDX.
(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:
(a) Name;
(b) Date of birth; or
(c) Address.
(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 4/02/02; and
(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 4/02/02.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: December 12, 2008
FILED WITH LRC: December 12, 2008 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
GENERAL GOVERNMENT CABINET  
Kentucky Board of Optometric Examiners  
(Amended After Comments)  

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

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

Section 1. Definitions. (1) “Charitable organization” means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.  
(2) “Charitable purpose” means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.  

Section 2. A Kentucky licensed optometrist may offer optometric services outside the optometrist’s regular office for a charitable purpose without violating KRS 320.310(1)(f) if the following conditions are met:  
(a) The charitable organization shall submit a written request to include the services of Kentucky licensed optometrists at least thirty (30) days before the optometric services are to be offered; and shall include:  
(i) [The board may waive the ninety (90) day deadline based on extenuating circumstances that prevented the charitable organization from complying with the ninety (90) day deadline.  
(ii) The charitable organization shall submit proof of its nonprofit status;  
(iii) The charitable organization provides assurance that the participating optometrists shall not be compensated or remunerated in any manner;  
(iv) The charitable organization denotes the names of all participating optometrists, and location, date, and time the optometric services will be offered, which shall not exceed seven (7) days insert per event;  
(v) The charitable organization states the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;  
(vi) A statement that the charitable organization shall require every participating optometrist to develop and maintain a permanent patient record for each individual treated by optometrists;  
(vii) The charitable organization shall require every participating optometrist to comply with the minimum eye examination requirements of 201 KAR 5:040, Section 7.  

Section 3. The board or its acting president may waive the thirty (30) day requirement based on extenuating circumstances that prevented the charitable organization from complying with the thirty (30) day requirement.  

Section 4. The board or its acting president shall notify the charitable organization in writing whether its request has been approved within ten (10) business days of receipt of the completed request.  

Section 5. A written request may include multiple events on different dates as long as the events are scheduled within twelve (12) months of the date the completed request is received by the board.  

Section 6. Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval.  

DR. JERALD F. COMBS, O.D., President  
APPROVED BY AGENCY: February 11, 2009  
FILED WITH LRC: February 12, 2009 at 2 p.m.  
CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, Spindletop Administrative Building Suite 305, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2744, fax (859) 246-2745.  

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  

Contact person: Connie Calvert  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation denotes the criteria for the practice of optometry outside a regular office for a charitable purpose.  
(b) The necessity of this administrative regulation: This regulation is necessary to regulate the practice of optometry outside a regular office for a charitable purpose.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations to reasonably regulate the practice of optometry. The regulation also states the criteria that protects an optometrist from discipline under KRS 320.310(1)(f).  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives criteria for the lawful provision of optometric services outside a regular office for a charitable purpose.  
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
(a) How the amendment will change this existing administrative regulation: The amendment will: shorten the time to request approval from 30 to 30 days before the services are to be offered, require the board to notify the charitable organization whether its request was approved, permit requests for multiple events, allow the board or its acting president to act, require the names of all participating optometrists, and allow the board to deny or withdraw approval if the regulation is not complied with.  
(b) The necessity of the amendment to this administrative regulation: The amendments clarified ambiguity and gave greater flexibility to charitable organizations.  
(c) How the amendment conforms to the content of the authorizing statutes: KRS 320.310(4) and (7) permits the board to promulgate administrative regulations it deems necessary for enforcement of optometric practice. KRS 320.310(1) permits the board to discipline a licensee for practicing outside the licensee’s regular office. The regulation informs the licensee of the circumstances in which charitable practice outside a regular office will not subject a licensee to discipline.  
(d) How the amendment will assist in the effective administration of the statutes: Licensees will have particularized notice of the circumstances in which they may offer charitable services outside a regular office without fear of discipline. The amendments offered greater flexibility in the approval process.  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately twenty (20) requests annually but this number could be greater with the filing economy.  
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:  
(a) List the actions that each of the regulated entities identified...
in question (3) will have to take to comply with this administrative regulation or amendment: The charitable organization will have to provide a written request for inclusion of optometric services by Kentucky licensed optometrists within thirty (30) days of the event (the thirty days may be waived in exigent circumstances). The board must notify the applicant within ten (10) days whether its request was approved. The request may include multiple events. The board may deny or withdraw approval for failure to comply with the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Charitable organizations will be able to offer optometric services through Kentucky licensed optometrists.

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

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

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

(c) End of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all charitable organizations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.240(4) and (7) authorizes the Board to promulgate administrative regulations to reasonably regulate the practice of optometry.

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

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(Amended After Comments)

806 KAR 17:480. Uniform evaluation and reevaluation of providers.

RELATES TO: KRS 205.560(12), 2168.155(2), 304.17A-005, 304.17A-550, 304.17A-545, 304.17A-576(1)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-545(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. EQ 2006-507, effective June 15, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. KRS 304.17A-545(6) requires the executive director to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan's list of participating providers. This administrative regulation establishes the uniform application form and guidelines for evaluation and reevaluation of a health care provider, including a psychologist.

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

(2) "Evaluation" or "credentialing" means [a]:

(a) A process for collecting and verifying professional qualifications of a health care provider;

(b) An assessment of [whether a health care provider's] provider meets specified criteria relating to professional competence and conduct; and

(c) A process to be completed before a health care provider may participate in a provider network of an insurer on an initial or ongoing basis.

[2] "Executive director" is defined in KRS 304.1-060(1).

(3) "Form KAPER-1" means the uniform application for credentialing or recredentialing of a health care provider pursuant to KRS 304.17A-545(5).

(4) "Health care provider" or "provider" means [a]:

(a) [A Health care provider pursuant to KRS 304.17A-005(23)]; or,

(b) [A Psychologist licensed under KRS Chap. 319.]

(5) "Insurer" is defined by [a] KRS 304.17A-005(27).

(6) "Managed care plan" is defined by [a] KRS 304.17A-500(9).

(7) "Office" is defined in KRS 304.17A-060(2).

(8) "Participating health care provider" is defined by [a] KRS 304.17A-500(10).

[8]"Provider network" is defined by [a] KRS 304.17A-005(35).

[9] [40] "Reevaluation" or "recredentialing" means [a process for identifying a change in a health care provider, which] may: [a]

(b) Have occurred in a health care provider since the provider's last evaluation or credentialing and

[6] [8] [10] Affect the health care provider's ability to perform contract services.

Section 2. Guidelines for an Insurer. (1) Except as established in subsection (3)(b)(4) of this section, an insurer which offers a managed care plan and performs credentialing or recredentialing activities shall use Form KAPER-1, Part A to credential or recredential a health care provider who desires participation in its provider network.

(2) Pursuant to subsection (1) of this section, an insurer shall:

(a) Have a mechanism for making available and accepting from a health care provider a handwritten or electronically submitted Form KAPER-1, Part A to credential or recredential a health care provider who desires participation in its provider network.

(b) Within thirty (30) days of receipt of a Form KAPER-1, Part A, electronically or in writing:

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1. Notify the health care provider of receipt of the Form KAPER-1 and, if applicable, whether the form does or does not meet the requirements of KRS 304.17A-576(1)(f) of any omitted or questionable information included on the form; and
2. Offer assistance to the provider, if requested; and
3. (c) Within sixty (60) days of receipt of a Form KAPER-1, Part A, which includes all data elements required for processing, provide an electronic or written notification regarding the status of credentialing (electronic or in writing) to the health care provider; and
4. Extend the time period identified in section 2(2)(c), due to the circumstances identified in KRS 304.17A-576(2)(f) of the status of credentialing. This time period may be extended up to forty-five (45) days due to [electronic or written] circumstances identified in KRS 304.17A-576(2).
(a) Additional time is required by the insurer to consider information submitted on the Form KAPER-1, Part A; and
(b) The health care provider is informed of the need for more time, including information relating to the circumstances, as referenced in KRS 304.17A-576(2), which caused the delay; and
(c) Not required: Provide electronic or written notification as established in paragraph (e) of this subsection every thirty (30) days after the initial notification until a final determination regarding credentialing has been issued to the health care provider.
(e) Be prohibits from requiring:
1. Information on the Form KAPER-1, Part A, which is not relevant to the scope of practice, health care setting, or service of the health care provider; and
2. Routine credentialing of a health care provider more frequently than three (3) years from the previous credentialing date; and
3. Upon making a final determination regarding credentialing of a health care provider in accordance with KRS 304.17A-576(1), provide notification of the determination to the health care provider.
(3) An insurer may use:
(a) Form KAPER-1, Part A to credential or recredential an individual in its provider network other than a health care provider; and
(b) An insurer may use: The provider credentialing application form of the Council for Affordable Quality Healthcare as identified in the Introduction of the Form KAPER-1, Part A, in lieu of the Form KAPER-1, Part A.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) Forms may also be obtained on the Department of insurance[office] website at: http://insurance.ky.gov [http://doi.prr.ky.gov].

SHARON CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: February 6, 2009
FILED WITH LRC: February 12, 2009 at 9 a.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who desire participation in the network of an insurer offering a managed care plan.
(b) Why is this administrative regulation necessary: Pursuant to KRS 304.17A-545(5), the executive director is required to promulgate an administrative regulation to establish a uniform application and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a health benefit plan's list of participating providers. This administrative regulation is necessary to fulfill this requirement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 304.2-110(2), which authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-545(5) authorizes the executive director to establish a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who will be on a managed care plan's list of participating providers.
(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 an application and guidelines for credentialing and recredentialing of health care providers, which is required under KRS 304.17A-545(5), by insurers offering a managed care plan. This regulation will also clarify requirements of 2008 RS HB 440, Section 2(1), which requires Insurers offering a managed care plan to notify an applicant of its determination relating to credentialing within ninety (90) days of receipt of the application. If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment makes minor clarifications due to public comments, revisions as required by KRS Chapter 13A, and incorporates a new edition date of the KAPER-1, which was revised due to public comments.
(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to conform to the requirements of 2008 RS HB 440, Section 2(1), update the application to reflect current credentialing practices, and comply with the drafting requirements of KRS Chapter 13A.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-545(5) authorizes the executive director to establish a uniform application form and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, which are on a managed care plan's list of participating providers. 

2008 RS HB 440, Section 2(1) requires an insurer offering a managed care plan to notify an applicant for credentialing of the final determination regarding the credentialing within ninety (90) days of submitting a complete application.
(d) How the amendment will assist in the effective administration of the statute: This amendment will assist in the effective administration of KRS 304.17A-545(5) by providing a uniform application and guidelines for the evaluation (credentialing) and reevaluation (recredentialing) of health care providers, including psychologists, who desire participation in a managed care plan, and will clarify the timeline for credentialing pursuant to 2008 RS HB 440, section 2(1).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects seven (7) Insurers, which were identified as currently marketing managed care plans (health maintenance organizations) in Kentucky. Additionally, the regulation affects health care providers, who are currently required to submit a completed Kentucky uniform application for evaluation and reevaluation, Form KAPER-1, which is incorporated by reference and identified in KRS 205.560(12) and KRS 216B.155(2).
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Health insurers offering managed care plans will be required to notify a provider of the approval or disapproval of credentialing within (90) days as required by KRS 304.17A-578 and no longer be required to notify a health care provider of the status of credentialing beyond the first notice at sixty (60) days following application. The insurers will also be provided with a credentialing application which reflects current credentialing practices. Additionally, the amendment includes technical information and makes clarifications relating to current credentialing requirements, which may streamline the credentialing process. Since most of the changes to Kentucky's uniform application for credentialing and recredentialing (Form KAPER-1) are technical in nature, health care providers will be affected minimally.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DOI sent a draft of this regulation to affected insurers and provider representatives for comment and did receive any comments regarding the actual cost of compliance; therefore, DOI does not anticipate that health insurers will incur any significant costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers will be in compliance with this regulation and the credentialing process for providers will be streamlined.

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

(a) Initially: Since insurers and health care providers are currently required to use the Form KAPER-1 for credentialing, little if any costs are anticipated with the implementation of this administrative regulation.

(b) On a continuing basis: Since insurers and health care providers are currently required to use the Form KAPER-1 for credentialing, little if any costs are anticipated with the continuing implementation of this administrative regulation.

(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 to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, 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 establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees.

TIERING: No tiering applies. No tiering does not apply because this administrative regulation is applied in the same manner to all insurers offering managed care plans and health care providers subject to credentialing requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 Kentucky Cabinet for Health and Family Services, including the Department for Medicaid Services and Office of Inspector General, which is required to use the uniform application for evaluation (credentialing) and reevaluation (recredentialing), Form KAPER-1, which is incorporated by reference, and the Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 KRS 304.17A-545(5) requires the executive director to promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on a managed care plan's list of participating providers. 2008 RS HB 440, Section 2(1) limits the timeframe for insurer credentialing determinations.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? It is anticipated that this regulation will remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? It is anticipated that this regulation will be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that this regulation will remain essentially revenue neutral.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 45:005. Kentucky [Retail] food code.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, and 217.992 authorize 217.005 to 217.245 and 217.992(4) authorizes the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. The function of this administrative regulation is to establish a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(2) "Mobile food unit" is defined by KRS 217.015(21).

(3) "Temporary food establishment" is defined by KRS 217.015(4).

Section 2. Insertions and Modifications to the 2005 FDA Food Code. (1) Except as provided by subsection (2) of this section, the 2005 edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this subsection.

(a) FDA Food Code Subparagraph 2-102.11(B). Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program or a local health department class that
addresses the food safety issues described in 2-102.11(C) of
the 2005 FDA food code. [H-201-10]

1. "Acreded program" means those food manager certifica-
tion programs taught by local health departments as agents of the
cabinet.
2. "Food establishment" includes a bed-and-breakfast as de-
defined by KAR 46-2001.
(b) FDA Code Paragraph 3-301.11(D). Food em-
ployees not serving a highly susceptible population may contact
exposed, ready-to-eat food with their bare hands if:
- the permit holder has a written policy that addresses hand-
washing (at intervals not to exceed thirty [30] minutes) while
processing, preparing, and serving all ready-to-eat foods; and
- hand-washing policies are maintained in the food estab-
lishment and made available to the regulatory authority upon re-
quest.
(c) FDA Code Paragraph 8-302.11.
- A mobile food unit shall not operate for more than fourteen
(14) consecutive days at one (1) location.
- After the fourteen (14) consecutive days has expired, a mo-
obile food unit shall not operate at the same location until a period of
thirty (30) days has elapsed.
- The following provisions of the 2005 FDA Food Code shall
not apply to Kentucky food establishments.
(a) FDA Code Paragraph 3-301.11(D)(1). The permit
holder obtains prior approval from the regulatory au-
thority.
(b) FDA Code Paragraph 3-301.11(D)(2)(a). For each bare
hand contact procedure, a listing of the specific ready-to-eat
foods that are touched by bare hands.
(c)(b) FDA Code Paragraph 3-301.11(D)(e). Other
control measures approved by the regulatory authority.
(d)(a) FDA Code Paragraph 8-811.10(B).
1. A line of not more than (designate amount) dollars, or by
imprisonment not exceeding one (1) year, or both the line and
imprisonment; or
2. If the PERSON has been convicted once of violating this
Code of or there is an Intent to defraud or mislead, a line not ex-
ceeding (designate amount) or imprisonment not exceeding (de-
signate time) years or both.
(e) FDA Code Annex 7: Form 3-A. Food Establish-
ment Inspection Report.
- Section 3. Inspections and Violations. (1) If an inspection
is made of an establishment, the findings shall be recorded on form
DFS-208, Food Establishment Inspection Report, and shall con-
stitute a written notice to the permit holder.
- A copy of the inspection report shall be furnished to the
permit holder or person in charge.
- The inspector's report form shall summarize the require-
ments of this administrative regulation and shall set forth a point
value for each requirement.
- The rating score of the establishment shall be the total of
the point value for all violations subtracted from 100.
- The inspection report form shall specify a period of time for
the correction of the violations found pursuant to the following pro-
visions:
(a) If the rating score of the establishment is eighty-five (85) or
more, all violations of one (1) or two (2) point items shall be cor-
rected prior to the next routine inspection.
(b) If the rating score of the establishment is at least seventy
(70) but not more than eighty-four (84), all violations of one (1) or
two (2) point items shall be corrected within a period not to exceed
thirty (30) days.
- Regardless of the rating score of the establishment, all
violations of three (3), four (4), or five (5) point items shall be cor-
rected within a time period specified by the cabinet but not to ex-
ceed ten (10) days.
- If the rating score of the establishment is less than seventy
(70), a permit shall be issued a notice of intent to sus-
pend the permit, using Form DFS-214 Enforcement Notice. The
permit shall be suspended within ten (10) days after receipt of the
notice unless a written request for a hearing is filed in accordance
with 802 KAR 1:400.
- A permit shall be suspended immediately upon notice to the
permit holder without a hearing if:
1. The cabinet has reason to believe that an imminent public
health hazard exists;
2. The permit holder or an authorized agent has interfered
with the cabinet in the performance of its duties after its agents have
duly and officially identified themselves; or
3. An inspection of an establishment reveals a rating score of
less than sixty (60).
- A permit holder subject to the immediate suspension of a
permit may make application on form DFS-215, Application for Re-
Instatement of Suspended Permit, for the purpose of reinstatement of
suspended permit.
- All violations concerning a temporary food service estab-
lishment shall be corrected within twenty-four (24) hours.
- If violations are not corrected within the required twenty-four
(24) hour time period, the permit shall be immediately sus-
pected.
- The permit holder whose permit has been suspended may
request a hearing using form DFS-212.
- If a food service establishment is required under the provi-
sions of this administrative regulation to cease operations, it shall
not resume operations until a reinstatement determines that condi-
tions responsible for the requirement to cease operations no longer
exist.
- An opportunity for reinstatement shall be offered within seven
(7) days of the cabinet's receipt of the form DFS-215.
- The inspection report shall state that:
(a) Failure to comply with a time limit for correction may result in
the suspension of a permit; and
(b) An opportunity for appeal will be provided if a written re-
quest for a hearing is filed in accordance with 802 KAR 1:400.

Section 4. Effective Date. This Code and the rules, regulations,
provisions, requirements, and orders shall take effect one (1) year
from the date of approval.

Section 5. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(b) "DFS-200, Facility Profile", edition 07/01;
(c) "DFS-202, Application for a Permit to Operate a Temporary,
Fee Exempt or Farmer's Market Temporary Food Service Estab-
lishment", edition 04/07;
(d) "DFS-208, Food Establishment Inspection Report", edition
1/09/2008;
(e) "DFS-210, Notice to Correct Violations", edition 02/95;
(f) "DFS-212, Request for Conference", edition 10/38;
(g) "DFS-213, Notice of Conference", edition 05/96;
(h) "DFS-214, Enforcement Notice to Apply for Permit, Order to
Correct Operation, or Permit Suspension and Order to Cease Op-
eration", edition 06/96;
(i) "DFS-215, Application for Re-Instatement of Suspended
Permit", edition 02/95;
(j) "DFS-216, Record of Complaint and Investigation", edition
04/95;
(k) "DFS-218, Concessionaires Food Sanitation Guidelines", edition
05/94;
(l) "DFS-222, Notice and Order of Quarantine", edition 05/94;
(m) "DFS-223, Tag-Quarantined", edition 10/90;
(n) "DFS-224, Label for Sample Collection and Analysis", edition
08/57;
(o) "DFS-229, Permit to Operate Temporary, Fee Exempt Food
Service or Farmer's Market Temporary Food Service Estab-
lishment", edition 04/07.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at Cabinet for Health and Family
Services, Department for Public Health, Division of Public Health
Protection and Safety, Food Safety Branch, 275 East Main Street,
Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
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(3) "Chemical preservative" means any chemical that, if added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) "Closed" means, without opening, large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(6) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(10) "Easily cleanable" means that surfaces are readily accessible and made of a material and finish so fabricated that residue may be effectively removed by normal cleaning methods.

(7) "Employees" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(8) "Equipment" means stoves, range, hood, ovens (including microwave), cookers, food conveyors, bells, refrigeration, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(10) "Homogenically sealed containers" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(11) "Kitchenware" means all multuse utensils other than tableware used in the storage, preparation, conveying or eating of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or apparatus.

(13) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035.

(14) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(16) "Packaged" means bottled, canned, eartened, or securely wrapped at a food processing establishment.

(16) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if the containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transport wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the 21 U.S.C. 241 to 245.

(17) "Perishable food" means food of a type or in a condition or physical state that it may spoil or otherwise become unfit for human consumption.

(18) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217.042.

(18) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217.042.

(10) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:
   1. Rapid and progressive growth of infectious or toxogenic microorganisms; or
   2. Slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:
   1. Has been treated; or
   2. Is raw seed sprouts.

(10) The following are excluded:

1. Air-dried hard boiled eggs with shells intact;
2. Food with water activity (aw) value of 0.85 or less;
3. Food with a hydrogen ion concentration (pH) level of four and six tenths (4.6) or below;
4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility, under conditions of non-refrigerated storage and distribution and
5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxogenic microorganisms or the clostridial growth of Clostridium botulinum cannot occur.

(20) "Puchare" means a non-propelled vehicle, limited to serving non-potentially hazardous foods or commissary wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) "Reconstituted" means dehydrated food products combined with water or other liquid.

(22) "Safe temperature" means, if considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or loss.

(23) "Sanitation" means effective bacteriological treatment by a process that provides adequate cumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) "Sealed" means free of cracks or other openings which permit the entry or escape of moisture.

(25) "Seasonal restricted food-concession" means any food service establishment which operates for not longer than eight (8) consecutive months in one (1) year, and shall_prepare and serve only nonpotentially hazardous foods, except that plain frankfurters with bones and-nachos with cheese sauce may be served. It shall not include concessions or establishments which serve only pre- packaged, snack-type non-potentially hazardous foods.

(26) "Shellfish" means clams, mussels, or oysters.

(27) "Sewage" means liquid waste containing fecal material or organic material from garbage grinders.

(28) "Single-service articles" means cups, containers, lids, closure plates, knives, forks, spoons, chopsticks, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one (1) time use, one (1) person use and then discarded.

(29) "Tableware" means all multuse eating and drinking utensils.

(30) "Utenes" means any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food.

(31) "Washing" means the cleaning and sanitizing of food contact surfaces of equipment and utensils such as kitchenware and tableware.

(32) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. Applicability. The requirements of this administrative regulation are applicable to all food service establishments, retail food stores, or a combination of both within the same establishment, as defined by KRS 217.015.

Section 3. Application for Permit-to-Operate. (1) Any person desiring to operate a food service establishment, a retail food store, or a seasonal restricted food-concession shall make written application for a permit on form DFS 200 provided by the cabinet. This form is incorporated by reference and may be viewed at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(2) If the application is for a retail food store and food service combined operation in one (1) establishment under one (1) ownership, the application shall:
(a) Designate "Retail food and food service combination;"
(b) Include the name and address of the applicant;
(c) The location and type of the proposed food service establishment and
(d) The signature of the applicant.

(3) If the application is for a temporary food service establishment, it shall also include the date of the proposed operation.
shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for Irving or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung unaveled on clean, sanitized hooks or rods, or in covered baskets beneath the meat.

(2) Container of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal, presuanced, vovee, or cased food packaged in airtight glass or other waterproof containers need not be elevated if the food container is not exposed to floor moisture,

(b) Containers may be stored on dollies, racks or pallets, provided the equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or nonpotable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet rooms or boiler rooms or vestibules.

(4) Food not subject to further washing or cooking before serving shall be stored in a refrigeration unit that protects it from contamination from food requiring washing or cooking. Food shall be stored in a way that prevents it from cross-contamination.

(5) Package food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Meatball, meatloaf, fish-stuffed meat, and similar food shall be in unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potential hazard foods at the required temperature during the 45 degrees (45 degrees) Fahrenheit or below storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers.

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a means for cooling, food contact surfaces, food utensils, except that the ice may be used for cooling tubers, conveyed beverages or beverage ingredients to a dispensing head, provided the tubers, cold plates and other, are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, electric units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and the hot poten-
Section 7. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleansed, rinsed, and sanitized to prevent cross-contamination. (2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served, this requirement shall not apply to whole, uncut fruits and raw vegetables for sale in retail food stores. (3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot food holding facilities except that: (a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process. (b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit. (c) Roast beef shall be cooked to an internal temperature of at least 120 degrees Fahrenheit, and roast beef steak shall be cooked to a temperature of 120 degrees Fahrenheit unless otherwise ordered by the immediate customer. (4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes. (5) Liquid, frozen, dry egg, and egg products shall be used only for cooking and baking purposes. (6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bain marie, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods. (7) Cold, partially thawing, thawing, or warming agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below. (8) Metal stem type numerically sealed indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods. (9) Potentially hazardous foods shall be thawed: (a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or (b) Under portable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and cool off food prior to placing it into the overflow or food service areas. (c) If the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or if the entire uninterrupted cooking process takes place in the microwave oven; or (d) As part of the conventional cooking process. Section 8. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service. (2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping, counter service line or salad bar food guards, display cases, or other effective means. (3) Pots of cooked tableware, e.g., self-service containers, re-turning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available and a sign shall be posted in the self-service food area to inform customers of this requirement. (4) Suitable utensils shall be used by employees or provided for consumer self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be: (a) Stored in food containers with the food they are being used to serve; or (b) Stored clean and dry; or (c) Stored in running water; or (d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry. (5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a manner that protects them from contamination. (6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents. (7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. If a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for mixed drinks, coffee or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity. (8) Cream, half-and-half, and non-dairy creamers or whitening agents shall be provided in an individual service container, protected from type pitcher or drawn from a refrigerated dispenser designed for that service; milk, cream, half-and-half and non-dairy creamers in unopened commercially filled containers may be sold without restriction as to container size in retail food stores. (9) Once-sealed, single-serving containers of food shall not be removed from the container. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.
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(3) Employes shall maintain a high degree of personal cleanliness and shall conform to good hygiene practices.

(4) Employes shall remove all insecure jewelry, and during periodic if food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 14.—Equipment and Utensils—Matenale.—(1) Multi-use equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent, and shall be smooth, easily cleanable, and durable under conditions of normal use. Single service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odor, color, or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equally nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, cereal bowls, bakers' tables, and wooden paddles in confectionery operations for processing spurring kettles if manually preparing confections at a temperature of 240-260 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single service articles such as chopping, coffee mills, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, degradative action, crazing, splitting, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials meting the requirements of the section is prohibited.

(5) Molasses and Annexa sheets may be used only once as a sewn container. Further reuse of the sheets for food service is prohibited.

Section 15.—Equipment and Utensils—Design and Fabrication.—(1) All equipment and utensils, including platoe ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to botting, buckling, pinching, skipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of brooks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning, ordinary W-type threads are preferred, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears or on within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept readily available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tube, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immobilizing food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surface of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of a material and in repair to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Fitters where used, shall be readily removable for cleaning and replacement.

Section 16.—Equipment Installation and Location.—(1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatically filled pre-packed, less than 200 degrees Fahrenheit, or above.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection;

(5) Elevators on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unusual sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed off, if exposed to sootage, the equipment shall be sealed to the adjacent equipment or adjacent walls.

(6) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(7) Equipment which was installed prior to the effective date of this administrative regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic. Equipment shall be so located and installed and as to enable reasonable compliance with the requirements of this section.

Section 17.—Equipment and Utensil Cleaning and Sanitization.—(1) Tabware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a sche-
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dule based on food temperature, type of food, and amount of food particle accumulation.
(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot-oil cooking and filtering devices and systems. Food-contact surfaces of all cooking equipment shall be kept free of accumulated grease deposits and other accumulated soil. Food-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.
(5) Nonfood-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris. These nonfood-contact surfaces shall be clean, dry, and used for no other purpose. Molten cloths used for wiping food-contact surfaces shall be clean, dry, and used for no other purpose. Molten cloths used for wiping food-contact surfaces shall be cleaned and rinsed frequently or stored in one of the sanitizing solutions permitted by subsection (7)(a) of this section. Molten cloths or sponges used for cleaning nonfood-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one of the sanitizing solutions permitted by subsection (7)(a) of this section.
(7) If manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment, and sanitized in the third compartment according to one of the methods included in paragraph (1) of this subsection. (a) All food-contact surfaces of all other equipment and utensils shall be sanitized by:
1. Immersion for at least one hour (120) minutes in a cleaning solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute.
2. Immersion for at least one hour (120) minutes in a cleaning solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute.
3. Immersion for at least one hour (120) minutes in a cleaning solution containing at least twelve and five tenths (12.5) parts per million of available chlorine in hypo-chlorite and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute.
4. Immersion in a cleaning solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute.
5. Treatment with steam-free from harmful materials or additive heat to a temperature too low to sanitize by immersion, but in which steam can be confined, or
6. Rinse, spray, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a) of this section if used for immersion sanitizing in the case of equipment too large to sanitize by immersion.
(b) If chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart B, Substances Utilized to Control the Growth of Microorganisms, Section 178.1010, Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.
(c) A three (3)-compartment sink shall be used for cleaning and sanitizing equipment or utensils is done manually, retail food establishments that were operating with a valid and effective permit prior to the effective date of this administrative regulation shall be allowed to continue using the equipment and utensils and each compartment of the sink shall be supplied with hot and cold-potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion. Those retail food stores that do not cut, process, or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3)-compartment sink.
(d) Dish tables or drain boards of adequate size shall be provided for proper handling of colloid utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing facilities.
(e) If hot water is used for sanitizing, the following facilities shall be provided and used:
   1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least one hundred and ten (100) degrees Fahrenheit, and
   2. A numerically scaled indicating thermomenter or accurate to plus or minus three (3) degrees Fahrenheit conventional to the sink that can be used for frequent check of water temperature, and
   3. Dish baskets of a size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
(f) If mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion warewashing machines or by any other type of machine or devices if it is demonstrated to the department that thorough cleaning and sanitizing can be accomplished by the devices. Machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.
   (a) The pressure of water supplied to spray-type warewashing machines shall be not less than fifty (50) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.
   (b) Suction and suction numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.
   (c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.
   (d) Drain boards shall be of adequate size for the proper handling of colloid utensils prior to washing and of cleaned utensils following sanitizing and shall be so located and constructed as not to interfere with the proper use of the warewashing facilities.
   (e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being placed in the warewashing equipment, and the brushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permit free draining. Clean rinse water shall remove particulate matter and detergent residues. All warewashing machines shall be thoroughly cleaned at least once a day or more often if necessary to maintain them in a satisfactory operating condition.
   (f) If chemicals are used for sanitization, they shall be automatically dispensed in concentration and for a period of time to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machine using chemicals for sanitization (sink tanks, stationary tanks, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than one hundred (100) degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.
   (g) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraph (a) to (e) of this subsection except that machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting the time and temperature requirements as are acceptable by the cabinet. Wash and pumped rinse temperatures
shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:
1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.
(b) Single tank, stationary rack, single temperature machine:
1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.
(c) Single tank, conveyor machine:
1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.
(d) Multiple tank, conveyor machine:
1. Wash temperature: 160 degrees Fahrenheit.
2. Pumpee rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.
(e) Single tank, pail, pan, and utensil washer (either stationary or moving rack):
1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 18—Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and moveable equipment shall be stored on or in a rack six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surface of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire-protection sprinkler headers.

(3) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practicable, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to prevent the handle to the employee or consumer.

(5) If prewashed, so practical, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period, and after any place at a table is occupied.

(4) Single service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.

(6) Single service articles shall be commercially packaged for individual use. They shall be available to the consumer in a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms, or under nonpotable water lines or exposed sewer lines.

(b) Single service articles shall be used only once.

Section 19—Sanitary Facilities and Controls. (1) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If a public water supply of a municipality or a water district is not available, the supply for the establishment shall be developed and approved pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection Administration regulations 401 KAR Chapter 8.

(c) If a public water supply of a municipality or a water district becomes available, connections shall be made to it and the private supply shall be discontinued.

(d) Retail food stores holding a valid and effective permit prior to the effective date of this administrative regulation shall not be required to have a hot and cold running water sink. 1. Only prepackaged foods are sold; or
2. Cutting and slicing is limited to ready to eat, cold cut foods, and performed in a sanitary manner complying with this administrative regulation.

(e) Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed.

(1) Steam used in contact with food or food contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration—Chapter I, Subpart D—Specific Uses Admissible Section 172.310 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and administrative regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.

(3) All potable water not provided directly by-pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to applicable laws and administrative regulations.

Section 20—Sewage. All sewage shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection Administrative Regulations 401 KAR Chapter 6 or the Cabinet for Health Services Administrative Regulations 402 KAR Chapter 10. If a public sewerage system becomes available, connections shall be made and the private sewage system be disconnected. Only nonwater-carried disposal methods which have been approved by the cabinet for temporary use shall be used.

Section 21—Plumbing. (1) All plumbing shall be sized, installed, and maintained pursuant to the State Plumbing Code, KRS Chapter 318. There shall be no cross connection between the safe water supply and any unused, unused, or nonpotable water system. The source of pollution through which safe water supply might become contaminated. All receiver type and other produce leggier or mistors shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed pursuant to applicable state laws and administrative regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The nonpotable water system shall be installed to produce the possibility of backflow. Devices to protect against backflow and backflow preventer shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22—Toilet Facilities. (1) In existing food service establishments adequate toilet facilities shall be provided and shall be located so as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to the requirements of the State Plumbing Code, KRS Chapter 318.

(2) Toilets and urinals shall be designed to be easily cleanable.

(a) Toilets in room doors shall be cold, tight fitting, and self-closing and shall be held and shut during cleaning or maintenance. Doors may be levered if installed pursuant to the State Fire Marshal's administrative regulation.

(b) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply
of toilet-tissue shall be provided at each toilet at all times. Eas.
ly cleanable receptacles shall be provided for waste materials, and
the receptacles in toilet rooms used by women shall be covered.

Section 23. Lavatory Facilities. (1) Lavatories shall be installed pursuant to the State Plumbing Code and shall be equipped with
hot and cold running water or running water tempered by means of a
mixing-valve, combination-valve, Steam-mixing-valves are prohibited. Hand cleansing soap or detergent, and approved sanit.
ary towels or other approved hand drying devices are to be con
veniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common
towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to
toilet rooms. In all new establishments and establishments which are extensively altered, lavatories shall be conveniently loc
ated within the food-preparation area and warewashing area. Sink
s used for food preparation or for washing equipment or uten.
sils shall not be used for hand washing.

(3) Lavatories, soap dispensers, and hand-drying devices and
all-related facilities shall be kept clean and in good repair.

Section 24. Garbage and Refuse. (1) Garbage and refuse shall be
kept in durable insect-proof and rodent-proof containers that look
proof and do not absorb liquids. Plastic bags and wet-strength paper
bags may be used to store these containers, and may be used for
storage inside the food service establishment if protected from
insects and rodents.

(2) Containers, compactors, and compactor systems shall be
kept clean and in good repair. Receptacles may be used for
storage inside the food service establishment if protected from
insects and rodents.

(3) There shall be a sufficient number of containers to hold all
the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly
cleaned on the inside and outside in a way that does not contami
nate food, equipment, utensils, or food-preparation areas. In new
establishments, suitable facilities, including hot water and deter
gent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in
a place inaccessible to insects and rodents. Outside storage of
plastic bags or wet-strength paper bags or baled waste containing
garbage or refuse is prohibited. Garbage and refuse containers
that do not contain garbage or food waste need not be stored in
covered containers.

(6) Garbage or refuse storage, if used, shall be con
structed of easily cleanable, nonabsorbent, washable materials,
shall be kept clean, shall be insect-proof and rodent-proof, and
shall be large enough to store the garbage and refuse containers
that accumulate.

(7) Outside storage areas or coolestors shall be large enough
to store the garbage and refuse containers that accumulate
and shall be kept clean. Garbage and refuse containers and compactor
systems located outside shall be stored on or above a smooth
surface of nonabsorbent material, such as concrete or machine
laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to
prevent the development of odor and the attraction of insects and
rodents.

(9) Where garbage or refuse is burned on the premises, it shall
be done by enclosed incineration that prevents the escape of
particulate matter pursuant to administrative regulations 401-KAR
Chapter 63 of the Cabinet for Natural Resources and Environmen
tal Protection. Areas around incineration facilities shall be kept
clean and orderly.

(10) Nonsewage liquid waste shall be disposed of in a manner
that will not create a public health nuisance.

Section 25. Insect and Rodent Control. (1) Effective measures
intended to eliminate the presence of rodents, flies, mosquitoes,
and other insects on the premises shall be utilized. The premises
shall be kept in a condition as to prevent the harborage or feeding
of insects or rodents.

(2) Openings to the outside shall be effectively protected
against the entrance of rodents and shall be protected against
the entrance of insects by light-fitting, self-closing doors, closed win
dows, screening, controlled air currents, or other means. Screen
doors shall be self-closing, and screens for windows, doors, sky
lights, transoms, and other openings to the outside shall be light-
fitting and free of breaks. Screening material shall not be less than
sixteen (16) mesh to one (1) inch.

Section 26. Construction and Maintenance of Physical Facilities.
(1) The floors of all food preparation, food storage, and uten
si washing areas, and the floors of all walk-in refrigerators, dress
ing rooms, locker rooms, and toilet rooms and vestibules shall be
constructed of smooth, durable materials such as glazed concrete,
terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight
wood-impregnated with plastic, and shall be maintained in good
repair.

(2) Carpeting, if used, shall be properly installed, easily clean-
able and maintained in good repair. Carpeting is prohibited in toilet
rooms, food preparation areas, and in warewashing areas where it
would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material
on the floors in food preparation areas is prohibited.

(4) Properly installed floor drains shall be provided in floors
that are water flushed for cleaning or that receive discharge of water
or other fluid waste from equipment. Floors shall be constructed
of glazed concrete, terrazzo, ceramic tile, or similar material graded
to drain all parts of the floor.

(5) The floor of each walk-in refrigerators shall be graded to
drain all parts of the floor to the outside through a waste pipe,
doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be nonabsorbent, grease
resistant materials and of a size, material, design, and construc
tion as to facilitate their being easily cleaned. Duckboards shall not
be used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ce
ramics, or similar materials, and where water flush cleaning
methods are used, junctures of wails with floors shall be oiled and
sealed. In all other cases, the junctures between the walls and
floors shall not present an open seam of more than one 1/32 of an
inch.

(8) Utility service lines and pipes shall not be unnecessarily
exposed on floors in food-preparation and warewashing areas and
in toilet rooms. Exposed service lines and pipes shall be installed in a
way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and
similar enclosures, shall be maintained in good repair.

(10) The walls, including non-supporting partitions, wall cov
erings, and ceilings of all food preparation and warewashing areas
and toilet rooms, shall be smooth, of a nonabsorbent material, and
easily cleanable. The use of rough or unfinished building materials
such as brick, concrete blocks, wooden beams, or chimples is prohibited
in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafter shall not be exposed in walk-in
refrigerators, food-preparation areas, warewashing areas, and
in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily
exposed on walls or ceilings in food-preparation and warewashing
areas and in toilet rooms. Exposed lines and pipes shall be in
stalled in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall mounted fans, decorative
material, and similar equipment attached to walls and ceilings
shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl,
and similar materials shall be easily cleanable and nonabsorbent
and shall be attached and sealed to the wall and ceiling surfaces
so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construc
tion shall be finished and sealed to provide an easily cleanable
surface.

Section 27. Cleaning Physical Facilities. Floors, mats, duck
boards, walls, ceilings, and attached equipment and decorative
materials shall be kept clean. Only dustless methods of cleaning
floors and walls shall be used, such as vacuum-cleaning, wet cleaning, or the use of dust-catching sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods if the least amount of food is exposed, such as after closing or between meals, in new establishments, or establishments that are extensively altered, readily accessible service sumps or curbed cleaning facilities shall be provided.

Section 28. Lighting. (1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surface and equipment in food preparation, warewashing, and hand-washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken-glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Counter-top bulbs may be approved by cabinet or hood manufacturer, or by the Health Authority. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 29. Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke, and fumes. Ventilation systems shall be installed and operated according to applicable state laws and administrative regulations, and, if vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which fumes, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Make-up air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 30. Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. These areas shall not be located in areas used for food preparation, warewashing, or service or for warewashing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings if dressing areas are designated, and the locker or other facilities shall be located within those areas.

Section 31. Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitation of equipment or utensils shall be present in retail food establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law.

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(4) Working containers used for storing cleaners and sanitizers taken from bulk supplies shall be identified with the common name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single-service articles, or single-use articles intended for use with food.

(6) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, lubricants and other chemicals shall not be stored above or intermingled with food, equipment, utensils, single-service articles, single-use articles intended for use with food, except that this requirement does not prohibit the convenient location and availability of cleaning and sanitizing agents at warewashing facilities.

(7) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on the surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensil, nor in a way that constitutes a hazard to employees or other persons nor in a way that is not in compliance with the manufacturer's labeling. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the cabinet shall be handled and bagged separately at check-out counters.

(9) Personnel medications shall not be stored in food storage, preparation, or service areas.

(10) First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

Section 32. Premises. (1) Retail food establishments and all parts of the property used in connection with the operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectually treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry or operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloth and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and clothes shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and fowl, shall be excluded from all food service establishments and from areas adjacent to such areas that are under direct food control.

(10) The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums.Escorted police, patrol dogs, or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33. Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this administrative regulation, except as provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and if no health hazard will result, may waive or modify requirements of this administrative regulation relating to physical facilities, except these requirements of subsections (4) and (5) of this section and Sections 23 and 35 of this administrative regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual serving, transported, and stored under conditions meeting the requirements of this administrative regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this administrative regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitation of equipment and utensils.
sits if the required equipment for cleaning and sanitation exists at its commissary; however, frankfurters may be prepared and served from these units or puchcars.

(3) Mobile food units or puchcars shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and dishwashing, and hand washing, pursuant to the requirements of this administrative regulation. The water-inlet shall be located in a position that it will not be contaminated by waste discharge, road durt, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the State Plumbing Code, KRS Chapter 319.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least 100 percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank if the mobile food unit is in motion. All connections on the vehicle for serving mobile food units with waste disposal facilities shall be at a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34—Commissary—(1) Mobile food units or puchcars shall operate from a commissary or enterprise food service contract that is connected and operated in accordance with the administrative regulation; mobile food units equipped with a potable water system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods shall not be required to operate from a fixed retail food establishment.

Section 35—Mobile Food Unit or Puchcar Servicing Area and Operations—(1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewer system, if available. In the event a public sewer system is not available, disposal shall be made into a private system designed, constructed, and operated in accordance with the requirements of the Department of Environmental Protection administrative regulations. 401 KAR Chapter 5 and the Cabinet for Health and Family Services—Resources and Administrative regulations 902 KAR Chapter 10; if a public sewerage system becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 36—Temporary Food Service Establishment—(1) A temporary food service establishment shall comply with the requirements of this administrative regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, which may prohibit the sale of some or all potentially hazardous foods, and if no health hazard will result, may waive or modify requirements of this administrative regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation- or storage-of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. The prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this administrative regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or watertight paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and if used, it shall be dispersed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for the equipment shall be provided.

(5) Enough potable water shall be available to the establishment for cleaning and sanitizing utensiles and equipment and for hand washing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in-contact with water or other drainable ice is prohibited, except that ice cubes or bottles of nonpotentially hazardous beverages may be stored if the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employees hand washing. Where water under pressure is unavailable, the facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tile, wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or rubber mats.

(10) Food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than necessary for the purpose or operation conducted. If these are proven, counter service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37—Seasonal—Restricted Food Concessions—(1) A seasonal restricted food concession shall comply with the requirements of this administrative regulation except as otherwise provided in this section. If no health hazard will result, the cabinet may waive or modify requirements of this administrative regulation except those requirements of subsections (2) to (14) of this section.

(2) Only nonpotentially hazardous foods shall be prepared and served by seasonal restricted food concessions except that plain frankfurters may be served with bread. Frankfurters may be heated by sauteing, grilling, or boiling; boiling shall be prohibited. Nachos with cheese sauce may be served. Seasonal restricted food concessions shall provide only single service articles for use by consumers. Condiments such as catsup, mustard, and relish shall be obtained from approved commercially-prepared sources and shall be provided in individually-portioned portions or dispensed from protected cup or squeeze-type dispensers only. The preparation or service of meat or artificial meat sauces shall be prohibited. The use of food or food products cannot be served, prepared or possessed in the home is prohibited.

(3) Reconstitutable products or ingredients which contain milk or egg components shall have been made from pasteurized products or ingredients. Frito-type foods, such as nachos shall be obtained from commercially approved sources.

(4) Flavorings made from concentrate shall not be formulated or mixed in the home; preparation shall be accomplished in the home.
seasonal restricted-food-concession or other permitted retail-food establishment.

(5) Equipment-and utensil-cleaning and sanitization. Cleaning and sanitizing of food equipment and utensils shall be accomplished in a manner that complies with applicable requirements of Section 17 of this administrative regulation. In seasonal restricted-concessions where running-water and sewerage are impracticable and where only the use of basic utensils such as knives, forks, spoons, and, without sufficient large enough for immersion of the utensils, requiring washing, the first for hot-detergent wash, the second for rinse, and the third for a sanitizing rinse. The cleaning and sanitizing of all cooking equipment and utensils shall be performed in the kitchen in a manner that complies with applicable requirements of Section 18 of this administrative regulation.

(7) Sanitary facilities and controls.

(a) If running-water is available, it shall be suitable, adequate and from a supply approved pursuant to the requirements of the State of Ohio Revised Code and Environmental Protection Administration regulations 401 KAR Chapter 6.

(b) All water not provided by pipe to the establishment shall be obtained from an approved source, shall be suitable, shall be transported in protected food-grade bulk containers and shall be of sufficient quantity for the operation. Hot water, at least ninety-five (95) degrees Farenheit, shall be provided for utensil and hand washing. An ice machine is required for the use of ice in the establishment. A push-button or turn-spool shall be provided through which potable water may be drawn from the storage container for hand and utensil washing.

(9) Liquid waste. All nonwaste liquid shall be collected and disposed of in accordance with applicable requirements of Section 24 of this administrative regulation.

(10) Plumbing and toilet facilities.

(a) All plumbing shall comply with applicable provisions of the State Plumbing Code, KRS Chapters 141.

(b) Sanitary toilet facilities shall be provided for employees and shall comply with the requirements of the State Plumbing Code, KRS Chapter 141, and Section 22 of the administrative regulation, provided that where an approved sewage system with running water is impracticable, commercial type portable toilets shall be provided for employees and shall be serviced and maintained in a sanitary manner.

(c) Written permission shall be obtained and made available for health authority review, for use of conventional toilet facilities if not owned by the seasonal restricted-food-concession operator.

(12) Hand washing facilities.

(a) Where running water is impracticable, an ample supply of water shall be provided. As shown in subsection (7) of this section, shall be provided for washing hands. Wastewater shall be collected and disposed of in a manner that will not create a public health nuisance.

(b) If a seasonal restricted food concession is located adjacent or connected to a facility with existing approved water and sewerage facilities properly plumbed hand washing facilities shall be provided conveniently located for employees where the operation requires manual contact with food.

(11) Garbage and refuse. Garbage and refuse shall be collected, stored and disposed of in accordance with the requirements of Section 24 of this administrative regulation.

(12) Construction, maintenance, and cleaning of physical facilities.

(a) Construction, maintenance, and cleaning shall be carried out in accordance with applicable requirements of Sections 26 and 27 of this administrative regulation except as provided in paragraphs (b), (c) and (d) of this subsection.

(b) Seasonal restricted-food-concessions which are located in open air areas shall be completely enclosed or equipped with an eighteen (18) inch minimum high service opening that is either self-closing or equipped with an air current to preclude the entry of flying insects when prevalent.

(c) Floors shall be made of concrete, tarmac, asphalt, or other similar cleanable material; gravel or dirt floors shall be prohibited.

(12) Plan review. If a seasonal restricted-food-concession is constructed or extensively remodeled, or if an existing structure is converted for use as a seasonal restricted food concession, appropriate plans with specifications for the construction, remodeling or alteration showing size, location, type of interior wall, ceiling and floor construction including the method of outer opening protection shall be submitted to the cabinet for review and approval before construction is begun.

(14) Inspection frequency. The cabinet shall inspect each seasonal restricted-food-concession at the time of initial permit issuance and at least once during each eight (8) month period of operation thereafter, with as many additional inspections and reinspection as necessary.

Section 38.—Plan Review of Future Construction. When a retail food establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail establishment properly prepared plans and specifications for construction, remodeling, or alteration, showing layout, arrangements, size, location, and type of facilities and a plumbing floor diagram shall be submitted to the cabinet for approval before work is begun.

Section 30.—Procedures If Infection is Suspected. If the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may issue a morbidity history of the suspected employee when and other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employees from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restraint of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the body discharges of employees.

Section 40.—Food-Catering Must Display Permit Number. Each catering kitchen or similar food-service establishment shall have posted in letters at least three (3) inches high the establishment's permit number clearly visible on vehicle(s) used in transporting foods. A copy of the establishment's permit to operate shall also be carried in each vehicle at all times. The permit number shall be carried in all kinds of ads or promotional materials used by food service catering establishments.

Section 41.—Enforcement Provisions. (1) If the cabinet has substantial reason to believe that an imminent public health hazard exists, or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In this event, the permit holder may request a hearing on form DFS 212. This form is incorporated by reference and may be obtained at the Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the cabinet may suspend the permit. The permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed in accordance with 902 KAR 1-100. Where there is a combination food-service and retail-food store,
permit suspension shall apply only to the operation in violation of requirements.

(3) Any person whose permit has been suspended may, at any time, make application on form DFS-216 for a reinstatement of the permit. The form is incorporated by reference and may be viewed at the Department for Public Health, 276 East Main Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a re-inspection. If the re-inspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to the action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked after an opportunity for a hearing is filed in accordance with 902 KAR 1:400. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

(7) At least once every six (6) months, the cabinet shall inspect each establishment and shall make as many additional inspections and re-inspections as are necessary to assure compliance with the terms of this administrative regulation. Retail food stores offering only pre-packaged foods for sale shall be inspected at least once every twelve (12) months, with as many additional inspections and re-inspections as necessary. Seasonal food-concessions shall be inspected at least once during the eight (8) month permitted period of operation each year.

(8) If an inspection is made of an establishment, the findings shall be recorded on inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. The form is incorporated by reference and may be viewed at the Department for Public Health, 276 East Main Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. The original of the inspection report form shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to the following provisions:

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within the time of the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected as soon as specified by the cabinet but in any event, not to exceed ten (10) days.

(d) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In this event, the permit holder may request a hearing.

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.

(g) If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a re-inspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 42. Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this administrative regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.316 and 217.602.

Section 43. The provisions of this administrative regulation shall apply to both food service establishments and retail food stores, unless otherwise specified,

WILLIAM D. HACKER, Commissioner
JANIE MILLER, Secretary
APPROVED BY ADMINISTRATION: February 11, 2009
FILED WITH LPC: February 12, 2009 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: Christine Atkinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: The function of this administrative regulation is to establish a uniform code for the regulation of all food service establishments, retail food establishments, for the purpose of protecting the public health.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to achieve the public health goals set forth by the legislature in KRS 217.002 to 217.998.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is vested in the secretary. The secretary may make the regulations promulgated under the federal act and the Fair Packaging and Labeling Act and the Nutrition Labeling and Education Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide uniformity statewide for all types of food service operations by defining the parameters to provide for a safe food supply.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will replace the existing Kentucky Food Code, based upon the 1976 FDA Food Code and replace it with the 2005 FDA Food Code.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the current code and modernize KY's food safety regulatory system to be
based on the most current scientific knowledge and be more uniform with the national standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the goals set forth in KRS 217.005 to 217.215, which authorizes the secretary to make regulations consistent with those promulgated under the federal act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will establish uniform food safety standards statewide. These standards will be consistent with national food safety standards which will be of benefit to food establishments that have a national presence, such as corporate chains in that they will have uniformity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All foodservice establishments, retail food stores, temporary food service establishments, restricted food service establishments, non permanent food service units, including any and all food service activities that constitute food service to the public. Currently there are approximately 20,000 permitted facilities of these types. All county health departments are affected by this regulation as an agency of the cabinet with respect to enforcement responsibilities and the Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity impacted by this regulation will have to conform to changes not consistent with the previous food code. The differences are with the modernization of the code to include the most up to date scientific knowledge. These changes reflect an emphasis on food protection through risk based procedure rather than merely on facility management. The result is improved food safety through a risk based approach backed by science. Their action will be to learn the changes and put them in place as they apply to their operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Initially some establishments will have to make minor adjustments in equipment and training for staff. As agreed to with our constituency, Kentucky Restaurant Association, Kentucky Retail Federation, local health and others in meetings planning for this change a one year effective date is requested after passage to educate and prepare food service establishments for the changes.

(c) As a result of compliance, what benefits will accrue to the eligible identified in question (3): The result is improved food safety through a risk based approach backed by science. Their action will be to learn the changes and put them in place as they apply to their operation.

(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 as currently a regulation is already in place and implemented.

(b) On a continuing basis: There will be no continuing costs.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Permit fees and agency funds.

(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: It would not be necessary to increase fees to implement this regulation as a similar regulation is already in place with a fee schedule.

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

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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? Local Fire Departments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.005 to KRS 217.998 authorizes these regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue stream for the state will be the same as it is currently for these permits of regulated entities.

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

(c) How much will it cost to administer this program for the first year? Same as it cost at present.

(d) How much will it cost to administer this program for subsequent years? There would not be an increase in cost to administer the regulation, other than regular and customary increases, salary increases.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation adopts the federal 2005 FDA Food Code, with some minor changes. In effect it replaces the current Retail Food Code used statewide that dates from 1976. In essence it is a modernization of the Commonwealth's food safety regulatory system. The changes will take education, explanation, training and adjustment to all entities, foodservice establishment owners, operators, as well as regulatory officials at every level. These activities will cost time, and time is money, but with the wide array of those affected it is very difficult to give a specific dollar amount. As the adjustments occur and everyone becomes familiar with the changes things will return to business as usual.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)


STATUTORY AUTHORITY: KRS 194A.030(2), 194A 050(1), 205.520(3), 205.5906(1).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity
presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care waiver services is to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.
(2) "ABI provider" means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.
(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.
(4) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.
(5) "Acquired brain injury long term care waiver service" means a home and community-based service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:
(a) An injury from a physical trauma;
(b) Anoxia or a hypoxic episode; or
(c) Allergic condition, toxic substance, or another acute medical incident.
(6) "ADHC services" means adult day health care services provided on a regularly scheduled basis that ensure optimal functioning of an ABI recipient who does not require twenty-four (24) hour care in an institutional setting.
(7) "Assessment" means a comprehensive evaluation of abilities, needs, and services that is:
(a) Completed on a MAP-351; and
(b) Submitted to the department.
1. For a level of care determination;
2. No less than every twelve (12) months.
(8) "Behavior Intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.
(9) "Blended services" means a nonduplicate combination of ABI waiver services identified in Section 4 of this administrative regulation and consumer-directed option services identified in Section 6 of this administrative regulation provided in accordance with the recipient's approved plan of care.
(10) "Behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.
(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's plan of care.
(12) "Consumer" is defined by KRS 205.5605(2).
(13) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based services waiver that allows a recipient to:
(a) Assist with the design of their programs;
(b) Choose a provider of services; and
(c) Direct the delivery of services to meet the recipient's needs.
(14) "Covered services and supports" is defined by KRS 205.5605(3).
(15) "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize the risk.
(16) "DCBS" means the Department for Community Based Services.
(17) "Department" means the Department for Medicaid Services or its designee.
(18) "Family training" means providing to the family or other responsible person:
(a) Interpretation or explanation of medical examinations and procedures;
(b) Treatment regimens;
(c) Use of equipment specified in the plan of care; or
(d) Advising them how to assist the participant.
(19) "Good cause" means a circumstance beyond the control of an individual which affects the individual's ability to access funding or services, including:
(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
(b) Death or incapacitation of the primary caregiver;
(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or
(d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual’s legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.
(20) "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.
(21) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI recipient's plan of care consisting of:
(a) The ABI recipient and legal representative if appointed;
(b) A chosen ABI service provider;
(c) A case manager; or
(d) Others as designated by the ABI recipient.
(22) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 333.300(4).
(23) "Licensed practical nurse" or "LPN" means a person who:
(a) Meets the definition of KRS 314.011(9); and
(b) Works under the supervision of a registered nurse.
(24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 333.500(5).
(25) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(26) "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.
(27) "Occupational therapist" is defined by KRS 319A.010(3).
(28) "Occupational therapy assistant" is defined by KRS 319A.010(4).
(29) "Physical therapist" is defined by KRS 327.010(2).
(30) "Physical therapist assistant" means a skilled health care worker who:
(a) Is certified by the Kentucky Board of Physical Therapy; and
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.
(31) "Pro re nata" or "PRN" means as needed.
(32) "Psychologist" is defined by KRS 319A.010(8).
(33) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
(34) "Qualified mental health professional" is defined by KRS 202A.011(12).
(35) "Registered nurse" or "RN" means a person who:
(a) Meets the definition established in KRS 314.011(9); and
(b) Has one (1) year or more experience as a professional nurse.
(36) "Representative" is defined by KRS 205.5605(9).
(37) "Speech-language pathologist" is defined by KRS 334A.020(3).
(38) "Support broker" means an individual designated by the department to:
(a) Provide training, technical assistance, and support to a consumer; and
(b) Assist a consumer in any other aspects of CDO.
(39) "Transition plan" means a plan that is developed to aid an ABI recipient in going from the ABI program into the community.
Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall be:
(a) Enrolled as a Medicaid provider in accordance with 907
KAR 1:671; 
(b) Located within an office in the Commonwealth of Kentucky;  
and  
(c) A licensed provider in accordance with:  
1. 902 KAR 20:006, if an adult day health care provider;  
2. 902 KAR 20:001, if a home health service provider; or  
3. 902 KAR 20:091, if a community mental health center; or  
(d) Certified by the department in accordance with 907 KAR  
1:145, Section 3, or 907 KAR 3:090, Section 2, if a provider type is  
not listed in paragraph (a) of this subsection.  
(2) An ABI provider shall comply with:  
(a) 907 KAR 1:672; and  
(b) 907 KAR 1:673; and  
(3) An ABI provider shall have a governing body that shall be:  
(a) A legally-constituted entity within the Commonwealth of  
Kentucky; and  
(b) Responsible for the overall operation of the organization  
including establishing policy that complies with this administrative  
regulation concerning the operation of the agency and the health,  
safety, and welfare of an ABI recipient served by the agency.  
(4) An ABI provider shall:  
(a) Unless participating in the CDO program, ensure that an  
ABI waiver service is not provided to an ABI recipient by a staff  
member of the ABI provider who has one (1) of the following blood  
relationships to the ABI recipient:  
1. Child;  
2. Parent;  
3. Sibling; or  
4. Spouse;  
(b) Not enroll an ABI recipient for whom the ABI provider cannot  
meet the service needs; and  
(c) Have and follow written criteria in accordance with this  
administrative regulation for determining the eligibility of an Individual  
for admission to services.  
(5) An ABI provider shall comply with the requirements of the  
Health Insurance Portability and Accountability Act (HIPAA) of  
(6) An ABI provider shall meet the following requirements if  
responsible for the management of an ABI recipient’s funds:  
(a) Separate accounting shall be maintained for each ABI recipient  
or for the recipient’s interest in a common trust or special account;  
(b) Account balance and records of transactions shall be provided  
to the ABI recipient or legal representative on a quarterly basis; and  
(c) The ABI recipient or legal representative shall be notified  
when a large balance is accrued that may affect Medicaid eligibility.  
(7) An ABI provider shall have a written statement of its mission  
and values.  
(8) An ABI provider shall have written policies and procedures  
for communication and interaction with a family and legal representative  
of an ABI recipient which shall:  
(a) Require a timely response to an inquiry;  
(b) Require the opportunity for interaction with direct care staff;  
(c) Require prompt notification of any unusual incident;  
(d) Permit visitation with the ABI recipient at a reasonable time  
and with due regard for the ABI recipient’s right of privacy;  
(e) Require involvement of the legal representative in decision-making  
regarding the selection and direction of the service provided; and  
(f) Consider the cultural, educational, language, and socioeconomic  
characteristics of the ABI recipient.  
(9) An ABI provider shall ensure the rights of an ABI recipient  
by:  
(a) Making available a description of the rights and the means  
by which the rights may be exercised, including the right:  
1. To time, space, and opportunity for personal privacy;  
2. To retain and use personal possessions; and  
3. For a supervised residential care, personal care, companion,  
or respite provider to communicate, associate and meet privately  
with a person of the ABI recipient’s choice, including:  
a. The right to send and receive unopened mail; and  
b. The right to private, accessible use of the telephone;  
(b) Maintaining a grievance and appeals system; and  
(c) Complying with the Americans with Disabilities Act pursuant  
to 28 C.F.R. Part 35; and  
(d) Prohibiting the use of:  
1. Prone or supine restraint;  
2. Corporal punishment;  
3. Seclusion;  
4. Verbal abuse; or  
5. Any procedure which denies private communication,  
requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility.  
(10) An ABI provider shall maintain accurate and service records  
and incident reports for a minimum of six (6) years from the date  
that a covered service was provided and all records and reports  
shall be made available to the:  
(a) Department;  
(b) ABI recipient’s legal guardian;  
(c) Cabinet for Health and Family Services, Office of Inspector  
General or its designee;  
(d) General Accounting Office or its designee;  
(e) Office of the Auditor of Public Accounts or its designee;  
(f) Office of the Attorney General or its designee; and  
(g) Centers for Medicare and Medicaid Services.  
(11) An ABI provider shall cooperate with monitoring visits from  
monitoring agents.  
(12) An ABI provider shall maintain a record for each ABI recipient  
that is served that shall:  
(a) Be recorded in permanent ink;  
(b) Be free from correction fluid;  
(c) Have a strike through for each error which is initialed and  
dated; and  
(d) Contain no blank lines between each entry.  
(13) A record of each ABI recipient who is served shall:  
(a) Be cumulative;  
(b) Be readily available;  
(c) Contain a legend that identifies any symbol or abbreviation  
used in making a record entry; and  
(d) Contain the following specific information:  
1. The ABI recipient’s name[-Social Security number-], and  
Medical Assistance Identification Number (MAID);  
2. An assessment summary relevant to the service area;  
3. The plan of care, MAP-109;  
4. The crisis prevention and response plan that shall include:  
a. A list containing emergency contact telephone numbers; and  
b. The ABI recipient’s history of any allergies with appropriate  
allergy alerts for severe allergies;  
5. The transition plan, if required and/or is provided by the service  
which shall include:  
a. Skills to be developed or maintained from the ABI long-term  
care waiver program;  
b. A listing of the ongoing formal and informal community  
services available to be accessed; and  
c. A listing of additional resources needed;  
6. The training objective for any service which provides skills  
training to the ABI recipient;  
7. The ABI recipient’s medication record, including a copy of  
the prescription or the signed physician’s order and the medication  
log if medication is administered at the service site;  
8. The identity and correct dosage of all prescribed medications  
including the name of the medication and the dosage form;  
9. Legally-adequate consent for the provision of services or  
other treatment including consent for emergency attention which  
shall be located at each service site;  
10. The long-term care facilities and Home and Community Base Program Certification form - MAP-350 updated at recertification; and  
11. Current level of care certification;  
(e) Be maintained by the provider in a manner to ensure the  
confidentiality of the ABI recipient’s record and other personal  
information and to allow the ABI recipient or legal representative to  
determine when to share the information;  
(f) Be secured against loss, destruction, or use by an unauthorized  
person signed by the provider; and  
(g) Be available to the ABI recipient or legal guardian according  
to the provider’s written policy and procedures which shall address  
the availability of the record.  
(14) An ABI provider shall:
(a) Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results obtained by the provider;

(1) Maintain documentation of annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:

1. Existing staff; or
2. A volunteer, if the volunteer performs direct care of a supervisory function;

(c) Ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

(d) If it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up testing administered by the employee’s or volunteer’s physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;

(e) Not permit any individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB;

(f) Maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;

(g) Prior to the employee’s date of hire or the volunteer’s date of service, obtain results of:

1. A criminal record check from the Administrative Office of the Courts; or
2. The equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

(h) Obtain the result of a nurse aide abuse registry check as described in 906 KAR 1:100;

(i) Annual, from twenty-five (25) percent of employees randomly selected, obtain:

1. The results of a criminal record check from the Kentucky Administrative Office of the Courts; or
2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;

(j) Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a central registry check as described in 922 KAR 1:470;

(k) Evaluate and document the performance of each employee upon completion of the agency’s designated probationary period, and at a minimum, annually thereafter;

(l) Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the agency site in order to ensure that high quality, appropriate services are provided to the ABI recipient;

(m) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(n) Not permit an employee or volunteer to transport an ABI recipient, if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(o) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(p) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(q) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(r) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(s) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(t) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(u) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(v) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(w) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(x) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(y) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(z) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

{15} An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor’s degree from an accredited institution in administration or a human services field; and
2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct contact staff who:

1. Is eighteen (18) years of age or older and has a high school diploma or GED; and
2. Has a minimum of two (2) years experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(16) An ABI provider shall establish written guidelines which:

(a) Ensure the health, safety, and welfare of the ABI recipient;

(b) Prohibit firearms and ammunition at a provider service site;

(c) Address maintenance of sanitary conditions;

(d) Ensure each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and
2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC;

(e) Ensure the availability of a supply of hot and cold running water with the water temperature at a tap, for water used by the ABI recipient, not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;

(f) Ensure that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensure that staff who supervise waiver participants in medication administration;

1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and procedures of administering medication; and

2. Document on a medication log all medication administered, including:

a. Self-administered and over-the-counter drugs; and

b. The date, time, and initials of the person who administered the medication;

(h) Ensure that the medication shall be:

1. Kept in a locked container;

2. Kept under double lock, if it is a controlled substance;

3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the ABI recipient or self-administered at a program site other than the recipient’s residence;

4. Documented on a medication administration form; and

5. Properly disposed of if it is discontinued; and

(i) Establish policy and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when an ABI recipient is asleep; and

(c) Mandate:

1. That the result of an evacuation drill be evaluated and modified as needed; and

2. That results of the prior year’s evacuation drill be maintained on site.

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the:

1. Mission;

2. Goals;

3. Organization of the agency; and

4. Policies and procedures of the agency;

(b) Require documentation of all training provided which shall include the:
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1. Type of training;
2. Name and title of the trainer;
3. Length of the training;
4. Date of completion; and
5. Signature of the trainee verifying completion;
(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with an ABI recipient, which shall include:
1. Required orientation in brain injury;
2. Identifying and reporting:
   a. Abuse;
   b. Neglect; and
   c. Exploitation;
3. Unless the employee is a licensed or registered nurse, first aid provided by:
   a. An individual certified as a trainer by the American Red Cross; or
   b. Other nationally accredited organization; and
4. Coronary pulmonary resuscitation provided by:
   a. An Individual certified as a trainer by the American Red Cross; or
   b. Other nationally accredited organization;
(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service;
(e) Not be required to receive the training specified in paragraph (c)(1) of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:
1. An occupational therapist or occupational therapy assistant providing occupational therapy;
2. A psychologist or psychologist with autonomous functioning providing psychological services;
3. Speech-language pathologist providing speech therapy;
4. Board certified behavior analyst; or
5. A physical therapist or physical therapy assistant providing physical therapy; and
(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:
1. Required orientation in brain injury as specified in paragraph (c)(1), (2), (3), and (4) of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the ABI recipient to whom the volunteer shall provide services.
(10) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 or an ABI long term care evaluation form by the provider.
(20) A case manager provider shall:
(a) Establish a human rights committee which shall:
   1. Include an individual:
      a. With a brain injury or a family member of an individual with a brain injury;
      b. Not affiliated with the ABI provider; and
      c. Who has knowledge and experience in human rights issues;
   2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; and
   3. Review and approve, in conjunction with the ABI recipient’s team, behavior intervention plans that [include-highly-restrictive procedures or contain human rights restrictions; and
   4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis;
(b) Establish a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
2. Be separate from the human rights committee; and
3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient’s team, an intervention plan that [includes-highly-restrictive-procedures or] contain human rights restrictions; and
(c) Complete and submit a Mayo-Portland Adaptability Inventory—

ry-4 to the department for each ABI recipient:
1. Within thirty (30) days of the recipient’s admission into the ABI program;
2. Annually thereafter; and
3. Upon discharge from the ABI Waiver program.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI long term care waiver program and individual shall:
(a) Be at least eighteen (18) years of age;
(b) Have an ABI which necessitates:
1. Supervision;
2. Rehabilitation services; and
3. Long term supports;
(c) Have an ABI that involves:
1. Cognition;
2. Behavior; or
3. Physical function;
(2) From inception of the ABI long term care waiver through June 30, 2009, the department shall enroll an individual on a first priority basis, if the individual:
(a) Is currently being served in the ABI waiver as defined in 907 KAR 3:090 and has reached maximum rehabilitation potential; or
(b) Has previously received ABI waiver services as defined in 907 KAR 3:090 and is currently in a nursing facility or ICF/MR and meets the eligibility criteria established in Section 4 of this administrative regulation.
(3) From Inception through June 30, 2009, after all first priority basis individuals outlined in subsection (2)(a) and (b) of this Section have been enrolled, the department shall enroll the remaining ABI rehabilitation waiver waiting list individuals as described in 907 KAR 3:090, Section 7, who meet the eligibility criteria established in Section 3 of this administrative regulation.
(4) After all individuals have been enrolled pursuant to subsections (2)(a), (2)(b), and (3) of this Section, the department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in Section 3 of this administrative regulation.
(5) If funding is not available, an individual shall be placed on the ABI long term care waiver waiting list in accordance with Section 7 of this administrative regulation.
(6) A certification packet shall be submitted to the department by a case manager or support broker on behalf of the applicant that contains:
(a) A copy of the allocation letter;
(b) An Assessment form - MAP-351;
(c) A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP-10, Waiver Services Plan Enrollment form;
(d) A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;
(e) A Plan of Care form - MAP-109; and
(f) The ABI Recipient’s Admission Discharge DCBS Notification Form - MAP-240.
(7) An individual shall receive notification of potential funding allocated for the ABI long term care waiver services for the individual in accordance with Section 7 of this administrative regulation.
(8) An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.
(9) An individual shall:
(a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;
(b) Be medically stable;
(c) Meet Medicaid eligibility requirements established in 907 KAR 1:005;
(d) Exhibit:
1. Cognitive;
2. Behavioral;
3. Motor; or
4. Sensory damage;
(e) Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and
(f) Receive notification of approval from the department.

(10) The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:

(a) Presenting problem;
(b) Plan of care goal;
(c) Expected benefit of the admission;
(d) Expected outcomes;
(e) Service required; and
(f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(11) An ABI long term care waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with mental retardation or a developmental disability; or
(b) Receiving a service in another home and community based waiver program.

(12) The department shall make:

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

(13) To maintain eligibility as an ABI recipient:

(a) An Individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:505; and
(b) A reevaluation shall be conducted at least once every twenty-four (24) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022; and
(c) Progress toward outcomes identified in the approved plan of care shall not be required.

(14) An ABI case manager or support broker provider shall notify the local DCBS office and the department of an ABI Recipient's Admission Discharge DCBS Notification form – MAP-24C, if the ABI recipient has a history of:

(a) Admitted to the ABI long term care waiver program;
(b) Discharged from the ABI long term care waiver program;
(c) Temporarily discharged from the ABI long term care waiver Program;
(d) Admitted to a nursing facility;
(e) Changing the primary provider; or
(f) Changing case management agency.

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

(16) Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:533 and shall be based upon:

(a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;
2. Copies of letters to providers; and
3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers;

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility;

b. For an individual who resides in a facility, the length of the transition plan shall not exceed sixty (60) days;

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

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

(e) For an ABI recipient who is no longer able to be safely served in the community; or

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

(17) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice, at least thirty (30) days prior to the effective date of the action, to the:

1. Department;
2. ABI recipient or legal representative; and
3. Case manager which shall include:

a. A statement of the intended action;

b. The basis for the intended action;

c. The authority by which the action is taken; and

d. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address, and telephone number of each current ABI provider in the state;
2. Provide assistance to the ABI recipient in making contact with another ABI provider;
3. Arrange transportation for a requested visit to an ABI provider site;
4. Provide a copy of pertinent information to the ABI recipient or legal representative;
5. Ensure the health, safety, and welfare of the ABI recipient until an appropriate placement is secured; and
6. Continue to provide supports until alternative services or another placement is secured; and

(f) Provide assistance to ensure a safe and effective service transition.

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

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

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

Section 4. Covered Services. (1) An ABI waiver service shall be:

(a) Prior-authorized by the department; and
(b) Provided pursuant to the plan of care.

(2) An ABI waiver provider shall provide the following services to an ABI recipient:

(a) Case management services which shall:

1. Include initiation, coordination, implementation, monitoring of the assessment and reassessment, and intake and eligibility processes;
2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;
3. Assist an ABI recipient and the interdisciplinary team with the development of an individualized plan of care and with updating the plan of care as necessary based on changes in the recipient's medical condition and supports;
4. Include monitoring the delivery of services and the effectiveness of the plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative, if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

(c. Include sending the ABI Plan of Care form - MAP-100 to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occur and thirty (30) days prior to discharge and shall include:

a. The skills or services to be obtained from the ABI long-term
care waiver program upon transition into the community; and
b. A listing of the community supports available upon the transition;
   6.] Assist an ABI recipient in obtaining a needed service outside those available by the ABI long term care waiver;
   8.] Be provided by a case manager who:
   a. Is a registered nurse;
   b. Is a licensed practical nurse;
   c. Has a bachelor's or master's degree in a human services field and meets all applicable requirements of the individual's particular field, including a degree in:
      (i) Psychology;
      (ii) Sociology;
      (iii) Social work;
      (iv) Rehabilitation counseling; or
      (v) Occupational therapy;
   d. Is an independent case manager;
   e. Is employed by a free-standing case management agency;
   f. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
   g. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;
   h. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
5. Shall, within the first thirty (30) days of the service and as information is updated, provide to the chosen ABI service provider a distribution of the:
   (i) Crisis prevention and response plan;
   (ii) Transition plan;
   (iii) Plan of care; and
   (iv) Other pertinent documents;
6. Shall provide twenty-four (24) hour telephone access to the ABI recipient and chosen ABI provider;
7. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:
   (i) Individual-specific; and
   (ii) Updated as a change occurs and at each recertification;
8. Shall assist an ABI recipient in planning resource use and assuring protection of resources;
9. Shall conduct one (1) face-to-face meeting with an ABI recipient within a calendar month occurring at a covered service site, with one (1) visit quarterly occurring at the ABI recipient's residence;
10. Shall ensure twenty-four (24) hour availability of services; and
11. Shall ensure that the ABI recipient's health, welfare, and safety needs are met; and
    7[8.] Be documented by a detailed staff note which shall include:
      a. A quarterly monthly summary including documentation of:
         (i) Monthly contact with each chosen ABI provider;
         (ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care; and
         (iii) Effectiveness of the plan of care;
   b. The ABI recipient's health, safety, and welfare;
   c. Progress toward outcomes identified in the approved plan of care;
   d. The date of the service;
   e. Beginning and ending time; and
   f. The signature and title of the individual providing the service;
   (b) Behavioral services which shall be:
      1. Be a systematic application of techniques and methods to influence or change a behavior in a desired way;
      2. Include a functional analysis of the ABI recipient's behavior including:
         a. An evaluation of the impact of an ABI on:
            (i) Cognition; and
            (ii) Behavior;
         b. An analysis of potential communicative intent of the behavior;
   c. The history of reinforcement for the behavior;
   d. Critical variables that precede the behavior;
   e. Effects of different situations on the behavior; and
   f. A hypothesis regarding the:
      (i) Motivation;
      (ii) Purpose; and
      (iii) Factors which maintain the behavior;
   3. Include the development of a behavioral support plan which shall:
      a. Be developed by the behavioral specialist;
      b. Not be implemented by the behavior specialist who wrote the plan;
      c. Be revised as necessary;
      d. Define the techniques and procedures used;
      e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive; and
      f. Reflect the use of positive approaches, and
      g. Prohibit the use of:
         (i) Prone or supine restraint;
         (ii) Corporal punishment;
         (iii) Seclusion;
         (iv) Verbal abuse; and
         (v) Any procedure which denies private communication, requires sleep, shelter, bedding, food, drink, or use of a bathroom facility;
   4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;
   5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:
      a. The analysis of data concerning the:
         (i) Frequency;
         (ii) Intensity; and
         (iii) Duration of a behavior; and
      b. Reports involved in implementing the behavioral service plan; and
      c. A monthly summary that assesses the participant's status related to the approved plan of care;
6. Be provided by a behavior specialist who shall:
   a. Be:
      (i)[a.] A psychologist;
      (ii)[b.-] A psychologist with autonomous functioning;
      (iii)[e.-] A licensed psychological associate;
      (iv)[d.-] A psychiatrist; and
   v.[e.] A licensed clinical social worker;
   vi.[e.] A clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;
   vii. An advanced registered nurse practitioner (ARNP);
   viii. A board certified behavior analyst; or
   ix. A licensed professional clinical counselor; and
   b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques;
   (i) Psychiatric nursing; or
   (ii) Rehabilitation nursing;
   g. An advanced registered nurse practitioner (ARNP); and
   h. A board certified behavior analyst; or
   i. A licensed professional clinical counselor]; and
   7. Be documented by a detailed staff note which shall include:
      a. The date of the service;
      b. The beginning and ending time;
      c. The signature and title of the behavioral specialist; and
      d. A summary of data analysis and progress of the individual related to the approved plan of care (toward meeting goals of the service);
   (c) Community living supports shall:
      1. Be in provided in accordance with the recipient's plan of care, including:
         a. A nonmedical service;
         b. Supervision; or
         c. Socialization;
      2. Include assistance, prompting, observing, or training in activities of daily living;
      3. Include activities of daily living which shall include:
         a. Bathing;
b. Eating;
c. Dressing;
d. Personal hygiene;
e. Shopping; and
f. Money management;
  i. Include prompting, observing, and monitoring of medications
      and nonmedical care not requiring a nurse or physician interven-
      tion;
  5. Include socialization, relationship building, and participation
     in community activities according to the approved plan of care
     which are therapeutic and not diversional in nature;
  6. Accompany and assist an ABI recipient while utilizing transpor-
     tation services;
  7. Include documentation in a detailed staff note which shall
     include the:
     a. Progress toward goals and objectives identified in the ap-
        proved plan of care;
     b. Date of the service;
     c. Beginning and ending time; and
     d. Signature and title of the individual providing the service;
     8. Not be provided to an ABI recipient who receives community
        residential services; and
     9. Be provided by:
        a. Home health agency licensed and operating in accordance
           with 902 KAR 20.081;
        b. Community mental health center licensed and operating in
           accordance with 902 KAR 20.081;
        c. Community habilitation program certified at least annually
           by the department; or
        d. Supervised Residential Care setting certified at least annual-
           ly by the department;
   d) Supervised residential care which shall be provided by:
      1. A community mental health center licensed and operating in
         accordance with 902 KAR 20.081; or
      2. An approved waiver provider certified at least annually
         by the department;
   (e) Supervised residential care which shall include the follow-
       ing levels of supervision:
      1. Supervised residential care level I which:
         a. Shall not have greater than three (3) ABI recipients residing
            in a home rented or owned by the ABI provider;
         b. Shall provide twenty-four (24) hour supervision;
         c. Shall be based on the individual needs of a recipient;
         d. May include the provision of trial periods of up to five (5)
            unsupervised hours per day for a member to work toward in-
            creased independence. If this option is utilized, an ABI provi-
            der shall develop an individualized plan for the recipient to work toward
            achieving increased independence, which shall include:
            (i) Necessary provisions to assure the recipient’s health, safety,
                and welfare;
            (ii) Documented approval by the recipient’s treatment team;
                and
            (iii) Periodic review and updates based on changes in the recipi-
                  ent’s status;
         e. Shall provide assistance and training with daily living skills
            including the following activities:
            (i) Ambulating;
            (ii) Dressing;
            (iv) Eating;
            (v) Toileting;
            (vi) Bathing;
            (vii) Meal planning;
            (viii) Grocery shopping and meal preparation;
            (ix) Laundry;
            (x) Budgeting and financial matters;
            (x) Home care and cleaning;
            (xi) Instruction in leisure skills;
            (xii) Instruction in self medication; or
            (xii) Social skills training, including the reduction or elimina-
                  tion of maladaptive behaviors in accordance with the plan of care;
         f. Shall provide or arrange transportation to services, activities,
            and medical appointments as needed;
         g. Shall accompany and assist an ABI recipient while utilizing
            transportation services as specified in the plan of care;
         h. Shall include participation in medical appointments and
            follow-up care as directed by the medical staff; and
         i. Shall be documented by a detailed staff note which shall
            include:
            (i) Progress toward goals and objectives identified in the ap-
                proved plan of care;
            (ii) The date of the service;
            (iii) Beginning and ending time; and
            (iv) The signature and title of the individual providing the ser-
                vice;
      2. Supervised residential care level II which shall:
         a. Not have greater than three (3) ABI recipients in a home
            rented or owned by the ABI provider;
         b. Provide twelve (12) to eighteen (18) hours of supervision per
            day;
     c. Be based on the individual needs of a recipient;
     d. Require documented approval by the recipient’s treatment
        team;
     e. Require periodic review and updates based on changes in
        the recipient’s status;
     f. Provide assistance and training with daily living skills which
        shall include the following activities:
        (i) Ambulating;
        (ii) Dressing;
        (iii) Grooming;
        (iv) Eating;
        (v) Toileting;
        (vi) Bathing;
        (vii) Meal planning;
        (viii) Grocery shopping and meal preparation;
        (ix) Laundry;
        (x) Budgeting and financial matters;
        (xi) Home care and cleaning;
        (xii) Instruction in leisure skills;
        (xii) Instruction in self medication; or
        (xii) Social skills training, including the reduction or elimina-
             tion of maladaptive behaviors in accordance with the plan of care;
     g. Provide or arrange transportation to services, activities, and
        medical appointments as needed;
     h. Accompany and assist an ABI recipient while utilizing transpor-
        tation services as specified in the plan of care;
     i. Include participation in medical appointments and follow-up
        care as directed by the medical staff;
     j. Provide twenty-four (24) hour on-call support; and
     k. Be documented by a detailed staff note which shall include:
        (ii) Progress toward goals and objectives identified in the ap-
            proved plan of care;
        (iii) The date of the service;
        (iv) The signature and title of the individual providing the ser-
            vice;
      3. Supervised residential care level III which shall:
         a. Be provided to an ABI participant who lives alone or with an
            unrelated roommate in a:
            (i) Single family home;
            (ii) Duplex; or
            (iii) Apartment building;
         b. Be provided to no more than two (2) waiver participants in
            one (1) home or apartment. This service shall be provided in no
            more than two (2) apartments per building, supported by staff who
            are available twenty-four (24) hours a day, seven (7) days a week
            but who do not live in any of the units occupied by individuals re-
            ceiving supports;
         c. Provide less than twelve (12) hours of supervision or support
            in the home;
         d. Require documented approval by the recipient’s treatment
            team; and
         e. Require periodic review and updates based on changes in
            the recipient's status.
         f. Provide assistance and training in daily living skills which
            shall include:
           (i) Ambulating;
           (ii) Dressing;

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(iii) Grooming;
(iv) Eating;
(v) Toileting;
(vi) Bathing;
(vii) Meal planning;
(viii) Grocery shopping and meal preparation;
(ix) Laundry;
(x) Budgeting and financial matters;
(xi) Home care and cleaning;
(xii) Instruction in leisure skills;
(xiii) Instruction in self medication; or
xiv) Social skills training, including the reduction or elimination of maladaptive behaviors in accordance with the plan of care;
g. Provide or arrange transportation to services, activities, and medical appointments as needed;
h. Accompany and assist an ABI recipient while utilizing transportation services;
i. Include participation in medical appointments and follow-up care as directed by the medical staff; and
j. Be documented by a detailed staff note which shall include:
(i) Progress toward goals and objectives identified in the approved plan of care;
(ii) The date of the service;
(iii) Beginning and ending time;
(iv) The signature and title of the individual providing the service; and
(v) Evidence of one (1) daily face-to-face contact with the ABI recipient;
l. Supervised residential care levels I, II, and III shall:
1. Not include the cost of room and board;
2. Be available to an ABI recipient who:
   a. Does not reside with a caregiver;
   b. Resides with a caregiver but demonstrates maladaptive behavior that places the ABI recipient at significant risk for injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents and it results in the need for the ABI recipient to be removed from the home to be in a more structured setting; or
   c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
   3. Utilize a modular home only if the:
      a. Wheels are removed;
      b. Home is anchored to a permanent foundation; and
      c. Windows are of adequate size for an adult to use as an exit in an emergency;
   4. Not utilize a motor home;
   5. Provide a sleeping room which ensures that an ABI recipient:
      a. Does not share a room with an Individual of the opposite gender who is not the ABI recipient's spouse;
      b. Does not share a room with an individual who presents a potential threat; and
   c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and
   6. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care;
   7. Have applications reviewed monthly by a residential review committee, as required by the department, to consider applications for supervised residential care. The application shall be:
   a. Considered in the order in which it was received by the department;
   b. Received by the department no later than the close of business day before the committee convenes in order to be considered at the monthly committee meeting; and
   c. Considered by the committee with the committee's decision based upon the following criteria:
      (i) The applicant does not reside with a caregiver;
      (ii) The applicant resides with a caregiver but demonstrates maladaptive behavior that places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
      (iii) The applicant demonstrates behavior that may result in potential legal problems if not ameliorated;
   8. Have applications reviewed by a residential review committee which is comprised of three (3) program staff of the Cabinet;
   a. Each member shall have professional or personal experience with brain injury or other cognitive disabilities; and
   b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch;
   (g) Counseling services which:
      1. Shall be designed to help an ABI long term care waiver recipient resolve personal issues or interpersonal problems resulting from the recipient's ABI;
      2. Shall assist a family member in implementing an ABI long term care waiver recipient's approved plan of care;
      3. In a severe case, shall be provided as an adjunct to behavioral programming;
   4. Shall include substance abuse or chemical dependency treatment;
   5. Shall include building and maintaining healthy relationships;
   6. Shall develop social skills or the skills to cope with and adjust to the brain injury;
   7. Shall increase knowledge and awareness of the effects of an ABI;
   8. May include group counseling if the service is:
      a. Provided to a maximum of twelve (12) ABI recipients; and
      b. Included in the recipient's approved plan of care for:
      (i) Substance abuse or chemical dependency treatment;
      (ii) Building and maintaining healthy relationships;
      (iii) Developing social skills;
      (iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and
      (v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;
   9. Shall be provided by:
      a. A psychologist;
      b. A psychologist with autonomous functioning;
      c. A licensed psychological associate;
      d. A licensed clinical social worker;
      e. A clinical nurse specialist with a master's degree in psychiatric nursing;
      f. An advanced registered nurse practitioner (ARNP);
      g. A certified alcohol and drug counselor;
      h. A certified alcohol and drug counselor;
      i. A licensed marriage and family therapist; and
      j. A licensed professional clinical counselor; and
   10. Shall be documented by a detailed staff note which shall include:
      a. Progress toward the goals and objectives established in the plan of care;
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (h) Family training which shall:
      1. Provide training and counseling services for the families of individuals served in the ABI long term care waiver. Training to family or other responsible persons shall include:
      a. Interpretation or explanation of medical examinations and procedures;
      b. Treatment regimens;
      c. Use of equipment specified in the plan of care; or
      d. Advising how to assist the participant;
      2. Include updates as needed to safely maintain the participant at home;
      3. Include specific goals in the ABI recipient's plan of care;
      4. Be training provided to family that may include:
         a. A person who lives with; or
         b. A person who provides care to an ABI long term care waiver recipient and may include a:
            (i) Parent;
            (ii) Spouse;
            (iii) Child;
            (iv) Relative;
(v) Foster family; or
(vi) In-law; and
5. Not include an individual who is employed to care for the consumer;
6. Be provided by an approved ABI waiver provider that is certified at least annually which may include:
   a. An occupational therapist;
   b. A certified occupational therapy assistant;
   c. A licensed practical nurse;
   d. A physical therapist;
   e. A physical therapy assistant;
   f. A registered nurse;
   g. A speech-language pathologist;
   h. A psychologist;
   i. A psychologist with autonomous functioning;
   j. A psychologist with autonomous functioning;
   k. A licensed psychological associate;
   l. A clinical nurse episcopal with a maestro's degree in:
      (i) Psychiatric nursing; or
      (ii) Rehabilitative nursing;
   m. An advanced registered nurse practitioner (ARNP);
   n. A certified alcohol and drug counselor;
   o. A licensed professional clinical counselor;
   p. A board certified behavior analyst;
   q. A licensed clinical social worker; or
   r. A licensed marriage and family therapist; and
7. Be documented by a detailed staff note which shall include: a. Progress toward the goals and objectives established in the plan of care;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (i) Nursing supports which shall include:
      1.a. A physician order to monitor medical conditions; or
      b. A physician order for training and oversight of medical procedures;
   2. The monitoring of specific medical conditions;
   3. Services that shall be provided by:
      a. A registered nurse who meets the definition established in KRS 314.011(5); or
      b. A licensed practical nurse as defined by KRS 314.011(9) who works under the supervision of a registered nurse; and
   4. Documentation by a detailed staff note which shall include: a. Progress toward the goals and objectives established in the plan of care;
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (i) Occupational therapy which shall be:
      1. A physician ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;
      2. Physician ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;
   3. [Exclusive of maintenance or the prevention of regression;]
   4. [Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational therapist in accordance with 201 KAR 28:13]; and
4.[6] Documented by a detailed staff note which shall include:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. The date of the service;
   c. Beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (i) A physical therapy service which shall be:
      1. A physician ordered evaluation of an ABI recipient by applying muscle, joint, and functional ability tests;
      2. Physician ordered treatment in a specified amount and duration to assist an ABI recipient in obtaining the highest possible level of functioning;
   3. Training of another ABI provider to improve the level of functioning of the recipient in that provider's service setting;
4. [Exclusive of maintenance or the prevention of regression;]
   6. Provided by a physical therapist or a physical therapy assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
5.[6] Documented by a detailed staff note which shall include:
   a. Progress made toward outcomes identified in the plan of care;
   b. The date of the service;
   c. Beginning and ending time of the service; and
   d. The signature and title of the individual providing the service;
   (i) A respite service which shall:
      1. Be provided only to an ABI long term care waiver recipient unable to administer self-care;
   2. Be provided by:
      a. A nursing facility;
      b. Community mental health center;
      c. Home health agency;
      d. Supervised residential care provider;
      e. Adult day training provider; or
   f. Adult day care provider;
   3. Be provided on a short-term basis due to:
      a. Absence; or
      b. Need for relief of an individual providing care to an ABI long term care waiver recipient;
   4. Be limited to 5,760 fifteen (15) minute units per calendar year unless an individual's usual caregiver is unable to provide care due to:
      a. Death in the family;
      b. Serious illness; or
      c. Hospitalization;
   5. Not be provided to an ABI long term care waiver recipient who receives supervised residential care;
   6. Not include the cost of room and board if provided in a nursing facility; and
   7. Be documented by a detailed staff note which shall include:
      a. Progress toward goals and objectives identified in the approved plan of care;
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (m) Speech therapy services which shall be:
   1. A physician ordered evaluation of an ABI recipient with a speech, hearing, or language disorder;
   2. A physician ordered rehabilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;
   3. [Exclusive of maintenance or the prevention of regression;]
   4.[4] Provided by a speech language pathologist; and
4.[6] Documented by a detailed staff note which shall include:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (n) Adult day training services which shall:
      1. Be provided by:
      a. An adult day training center which is certified at least annually by the department;
      b. An outpatient rehabilitation facility which is licensed and operating in accordance with 902 KAR 20:190; or
      c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;
   2. Focus on enabling the individual to attain or maintain the individual's maximum functional level and reintegrate the individual into the community;
   3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person unless an ABI recipient requires individualized special service;
   4. Include the following services:
      a. Social skills training related to problematic behaviors identified in the recipient's plan of care;
      b. Sensory or motor development;
      c. Reduction or elimination of a maladaptive behavior;
      d. Provocational; or
e. Teaching concepts and skills to promote independence including:
   (i) Following instructions;
   (ii) Attendance and punctuality;
   (iii) Task completion;
   (iv) Budgeting and money management;
   (v) Problem solving; or
   (vi) Safety;

5. Be provided in a nonresidential setting;
6. Be developed in accordance with an ABI waiver service recipient’s overall approved plan of care;
7. Reflect the recommendations of an ABI waiver service recipient’s interdisciplinary team;
8. Be appropriate:
   a. Given an ABI waiver service recipient’s:
      (i) Age;
      (ii) Level of cognitive and behavioral function; and
      (iii) Interest;
   b. Given an ABI waiver service recipient’s ability prior to and after the recipient’s injury; and
   c. According to the approved plan of care and be therapeutic in nature and not diversional;
9. Be coordinated with:
   a. Occupational;
   b. Speech, or
   c. Other rehabilitation therapy included in an ABI long term care waiver recipient’s plan of care;
10. Provide an ABI long term care waiver recipient with an organized framework within which to function in the recipient’s daily activities;
11. Entail frequent assessments of an ABI long term care waiver recipient’s progress and be appropriately revised as necessary; and
12. Be documented by a detailed staff note which shall include:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;

   [and

   e. A monthly summary that assesses the participant’s status related to the approved plan of care]
   (a) Adult day health care services which shall:
      1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and
      2. Include the following basic services and necessities provided to a Medicaid ABI long term care waiver recipient during the posted hours of operation:
         a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
            (i) Ostomy care;
            (ii) Urinary catheter care;
            (iii) Decubitus care;
            (iv) Tube feeding;
            (v) Venipuncture;
            (vi) Insulin injections;
            (vii) Tracheostomy care; or
            (viii) Medical monitoring;
         b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
      c. Snacks;
      d. Supervision by a registered nurse;
      e. Activities that are appropriate, given an ABI long term care waiver recipient’s:
         (i) Age;
         (ii) Level of cognitive and behavioral function;
         (iii) Interest; and
      f. Routine services that meet the daily personal and health care needs of an ABI long term care waiver recipient, including:
         (i) Monitoring of vital signs;
         (ii) Assistance with activities of daily living; and
         (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment

   needed for use by an ABI long term care waiver recipient;
3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;
4. Focus on enabling the individual to attain or maintain the individual’s maximum functional level and reintegrate an individual into the community by providing the following training:
   a. Social skills training related to problematic behaviors identified in the ABI long term care waiver recipient’s plan of care;
   b. Sensory or motor development;
   c. Reduction or elimination of a maladaptive behavior for the ABI long term care waiver recipient’s plan of care;
   d. Provocational; or
   e. Teaching concepts and skills to promote independence including:
      (i) Following instructions;
      (ii) Attendance and punctuality;
      (iii) Task completion;
      (iv) Budgeting and money management;
      (v) Problem solving; or
      (vi) Safety;

5. Be provided in a nonresidential setting;
6. Be developed in accordance with an ABI long term care waiver recipient’s overall approved plan of care, therapeutic in nature and not diversional;
7. Reflect the recommendations of an ABI long term care waiver recipient’s interdisciplinary team;
8. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, physician assistant, or advanced registered nurse practitioner in an ABI long term care waiver recipient’s adult day health care plan of treatment. Ancillary services shall:
   a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the ABI long term care waiver recipient or adult day health care center staff;
   b. Be reasonable and necessary for the ABI long term care waiver recipient’s condition;
   c. Be rehabilitative in nature;
   d. Include:
      (i) Physical therapy provided by a physical therapist or physical therapist assistant;
      (ii) Occupational therapy provided by an occupational therapist or occupational therapist assistant; or
      (iii) Speech therapy provided by a speech-language pathologist; and
   e. Comply with the:
      (i) Physical;
      (ii) Occupational; and
   (iii) Speech therapy requirements established in Technical Criteria for Reviewing Ancillary Services for Adults in accordance with 907 KAR 1:030, Section 3 and 6.
9. Be provided to an ABI long term care waiver recipient by the health team in an adult day health care center which may include:
   a. A physician;
   b. A physician assistant;
   c. An advanced registered nurse practitioner (ARNP);
   d. A registered nurse;
   e. A licensed practical nurse;
   f. An activities director;
   g. A physical therapist;
   h. A physical therapist assistant;
   i. An occupational therapist;
   j. An occupational therapist assistant;
   k. A speech pathologist;
   l. A social worker;
   m. A nutritionist;
   n. A health aide;
   o. An LPCC
   p. A licensed marriage and family therapist;
   q. A certified psychologist with autonomous functioning; or
   r. A licensed psychological associate;
10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20.066 and from information in the Map-351 and revised as needed;
11. Be documented by a detailed staff note which shall include:
a. Progress toward goals and objectives identified in the approved plan of care,
   b. The date of the service;
   c. The beginning and ending time;
   d. The name and title of the individual providing the service;
   e. A monthly summary that assesses the participant’s status related to the approved plan of care;
   (p) Supported employment which shall be:
   1. Intensive, ongoing services for an ABI long term care waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;
   2. Provided by a:
   a. Supported employment provider;
   b. Sheltered employment provider; or
   c. Structured day program provider;
   3. Provided one-on-one;
   4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI long term care waiver recipient’s file;
   5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;
   6. An activity needed to sustain paid work by an ABI long term care waiver recipient receiving waiver services, including:
      a. Supervision; and
      b. Training;
   7. Exclusive of work performed directly for the supported employment provider; and
   8. Documented by a time and attendance record which shall include:
      a. Progress toward the goals and objectives identified in the plan of care;
      b. The date of service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (q) Specialized medical equipment and supplies which shall be:
      1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
      2. Enable an ABI recipient to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
      3. Be ordered by a physician, and submitted on a Request for Equipment form - MAP-95 and include three (3) estimates for vision and hearing;
      4. Include equipment necessary to the proper functioning of specialized items;
      5. Not be available through the department’s durable medical equipment, vision, or hearing program;
      6. Not be necessary for life support;
      7. Meet applicable standards of manufacture, design, and installation; and
      8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient;
   (r) Environmental and minor home adaptations which shall:
      1. Be provided in accordance with applicable state and local building codes;
      2. Be provided to an ABI recipient if:
         a. Ordered by a physician;
         b. Prior-authorized by the ABIB;
         c. Submitted on a Request for Equipment form - MAP-95 by a case manager or support broker;
         d. Specified in an ABI long term care waiver recipient’s approved plan of care;
         e. Necessary to enable an ABI recipient to function with greater independence within the recipient’s home; and
      1. Without the modification, the ABI recipient requires institutionalization;
      2. Not include a vehicle modification;
      3. Be limited to no more than $2,000 for an ABI recipient in a twelve (12) month period; and
      5. If entailing:
         a. Electrical work, be provided by a licensed electrician; or
         b. Plumbing work, be provided by a licensed plumber;
      6. Assessment services which shall:
         1. Be a comprehensive assessment which shall identify an ABI long term care waiver recipient’s needs and the services that the recipient’s family cannot manage or arrange for the recipient;
         2. Evaluate an ABI long term care waiver recipient’s physical health, mental health, social supports, and environment;
         3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;
         4. Be conducted by an ABI case manager or support broker;
         5. Be conducted within seven (7) calendar days of receipt of the request for assessment;
         6. Include at least one (1) face-to-face contact with the ABI long term care waiver recipient and, if appropriate, the recipient’s family by the assessor in the ABI long term care waiver recipient’s home; and
         7. Not be reimbursable if the individual does not receive a level of care certification; and
   (s) Reassessment service which shall:
      1. Be performed at least every twelve (12) months;
      2. Be conducted using the same procedures as for an assessment service;
      3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
      4. Not be reimbursable if conducted during a period that the ABI long term care waiver recipient is not covered by a valid level of care certification; and
      5. Not be retroactive.

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

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

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

2. There shall be three (3) classes of incidents as follows:
   a. A class I incident which shall:
      1. Be minor in nature and not create a serious consequence;
      2. Not require an investigation by the provider agency;
      3. Be reported within twenty-four (24) hours to the:
         a. Case manager; or
         b. Support broker;
      4. Be reported to the guardian as directed by the guardian; and
      5. Be retained on file at the:
         a. Provider and case management agency; or
         b. Support brokerage agency;
   b. A class II incident which shall:
      1. Be serious in nature;
      2. Include a medication error; or
      3. Involve the use of a:
         a. Physical; or
         b. Chemical restraint;

2. Require an investigation which shall:
   a. Be initiated by the provider agency within twenty-four (24)
hours of discovery; and
b. Shall involve the case manager or support broker;
3. Be reported to the following by the provider agency:
   a. The case manager or support broker within twenty-four (24)
hours of discovery;
b. The guardian within twenty-four (24) hours of discovery; and
c. ABIIB within twenty-four (24) hours of discovery followed by:
   (i) A complete written report of the incident investigation; and
   (ii) Follow-up within ten (10) calendar days of discovery;
   (c) A class Ill incident which shall:
      1.a. Be grave in nature;
      b. Involve suspected:
         (I) Abuse;
         (II) Neglect; or
         (III) Exploitation;
      c. Involve a medication error which requires a medical inter-
         vention; or
      d. Be a death;
2. Be immediately investigated by the provider agency, and the
   investigation shall involve the case manager or support broker; and
3. Be reported by the provider agency to:
   a. The case manager or support broker within eight (8) hours
      of discovery;
b. DCBS, immediately upon discovery, if involving suspected
   abuse, neglect, or exploitation in accordance with KRS Chapter
   209;
c. The guardian within eight (8) hours of discovery; and
d. ABIIB within eight (8) hours of discovery followed by:
   (i) A complete written report of the incident investigation; and
   (ii) Follow-up within seven (7) calendar days of discovery. If an
   incident occurs after 5 p.m. EST on a weekday or occurs on a
   weekend or holiday, notification to ABIIB shall occur on the follow-
   ing business day.
(3) The following documentation with a complete written report
shall be submitted for a death:
(a) A current plan of care;
(b) A current list of prescribed medications including PRN med-
   ications;
(c) A current crisis plan;
(d) Medication Administration Review (MAR) forms for the
   current and previous month;
(e) Staff notes from the current and previous month including
details of physician and emergency room visits;
(f) Any additional information requested by the department;
(g) A coroner's report; and
(h) If performed, an autopsy report.

Section 7. ABI Long Term Waiting List. (1) An individual eight-
teen (18) years of age or older applying for an ABI long term care
waiver service shall be placed on a statewide ABI long term care
waiver waiting list which shall be maintained by the department.
(2) In order to be placed on the ABI long term care waiver wait-
ing list, an individual shall submit to the department a:
(a) Completed Acquired Brain Injury Waiver Services Program
    Application form MAP-28, and
(b) Waiver Services - Physician Recommendation form - MAP-
    10.
(3) The order of placement on the ABI long term care waiver wait-
ing list shall be determined by:
(a) Chronological date of receipt of the Waiver Services - Phy-
    sician Recommendation form - MAP-10;
(b) Category of need of the individual as follows:
   1. Emergency. An immediate service is indicated as deter-
      mined by:
      a. The individual currently is demonstrating behavior related
to the individual's acquired brain injury that places the recipient, care-
      giver, or others at risk of significant harm;
      b. The individual is demonstrating behavior related to the indi-
         vidual's acquired brain injury which has resulted in the individual's
         arrest; or
      2. Nonemergency; and
   (c) The Emergency Committee which shall consider applica-
      tions for the Acquired Brain Injury long term care waiver program
      for emergency placement. The Emergency Committee meetings

shall regularly occur during the fourth week of each month. To be
considered at the monthly committee meeting, an application shall
be received by the department no later than three (3) business
days before the scheduled committee meeting.
(1) The Emergency Review Committee shall be comprised of
three (3) program staff of the Cabinet;
   a. Each member shall have professional or personal expe-
      rienee with brain injuries or other cognitive disabilities, and
   b. At least two (2) members shall not be supervised by the
      branch manager of the Acquired Brain Injury Branch.
(4) In determining chronological status, the original date of
receipt of the Acquired Brain Injury Waiver Services Program Ap-
lication form - MAP-28 and the Waiver Services - Physician Re-
commendation form - MAP-10 shall be maintained and not changed
if an individual is moved from one (1) category of need to another.
(5) A written statement by a physician or other qualified mental
health professional shall be required to support the validation of
risk of significant harm to an individual or caregiver, or the nature
of the individual's medical need.
(6) Written documentation by law enforcement or court per-
sonnel shall be required to support the validation of a history of
arrest.
(7) If multiple applications are received on the same date, a
lottery shall be held to determine placement on the waiting list
within each category of need.
(8) A written notification of placement on the waiting list shall
be mailed to the individual or the individual's legal representative
and case management provider if identifiable.
(9) Maintenance of the ABI long term care waiver waiting list
shall occur as follows:
   (a) The department shall, at a minimum, update the waiting list
      annually;
   (b) If an individual is removed from the ABI long term care
      waiver waiting list, written notification shall be mailed by the de-
      partment to:
      1. Individual;
      2. Individual's legal representative; and
      3. ABI case manager;
   (c) Reassignment of category of need shall be completed
      based on the updated information and validation process.
   (10) An individual or legal representative may submit a request
for consideration of movement from one (1) category of need to
another at any time an individual's status changes.
(12) An individual shall be removed from the ABI long term
care waiver waiting list if:
   (a) After a documented attempt, the department is unable
      to locate the individual or the individual's legal representative;
   (b) The individual is deceased;
   (c) The individual or individual's legal representative refuses
      the offer to ABI long term care waiver services and does not re-
      quest to be maintained on the ABI long term care waiver wait-
       ling list.
(13) If an individual is removed from the ABI long term care
waiver waiting list, written notification shall be mailed by the de-
partment to:
   (a) Individual or to the individual's legal representative; and
   (b) ABI case manager.
(14) The removal of an individual from the ABI long term care
waiver waiting list shall not prevent the submission of a new ap-
lication at a later date.
(15) Potential funding allocated for services for an individual
shall be based upon:
   (a) The individual's category of need; and
   (b) The individual's chronological date of placement on the ABI
      long term care waiver waiting list.

Section 8. Consumer Directed Option. (1) Covered services and
supports provided to an ABI long term care waiver recipient
participating in CDO shall include:
   (a) A home and community support service which shall:
      1. Be available only under the consumer directed option;
      2. Be provided in the consumer's home or in the community;
      3. Be based upon therapeutic goals and not be diversional in

nature;
4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-CDO acquired brain injury service; and
5.a. Be respite for the primary caregiver; or
b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in the individual’s own home or the home of a family member and may include:
(i) Routine household tasks and maintenance;
(ii) Activities of daily living;
(iii) Personal hygiene;
(iv) Shopping;
(v) Money management;
(vi) Medication management;
(vii) Socialization;
(viii) Relationship building;
(b) Meal planning;
(c) Meal preparation;
(x) Grocery shopping; or
(xi) Participation in community activities;
(b) Goods and services which shall:
1. Be individualized;
2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;
3. Not include experimental goods or services; and
4. Not include chemical or physical restraints;
(c) A community day support service which shall:
1. Be available, if requested, under the consumer directed option;
2. Be provided in a community setting;
3. Be tailored to the consumer’s specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for:
a. Work or community activities;
b. Socialization; and
(c) Leisure or retirement activities;
4. Be based upon therapeutic goals and not be diversional in nature; and
5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-CDO acquired brain injury service.
(2) To be covered, a CDO service shall be specified in a consumer’s plan of care.
(3) Reimbursement for a CDO service shall not exceed the department’s allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.
(a) A consumer, including a married consumer, shall choose a provider and the choice of CDO provider shall be documented in the consumer’s plan of care.
(b) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.
(7) The department shall immediately terminate a consumer from CDO services if:
(a) Imminent danger to the consumer’s health, safety, or welfare exists;
(b) The consumer fails to pay patient liability;
(c) The consumer’s plan of care indicates the consumer requires more hours of service than the program can provide, jeopardizing the consumer’s safety and welfare due to being left alone without a caregiver present, or
(d) The consumer, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.
(8) The department may terminate a consumer from CDO services if the department determines that the consumer’s CDO provider has not adhered to the plan of care.
(9) Except as provided in subsection (7) of this section, prior to a consumer’s termination from CDO services, the support broker shall:
(a) Notify the assessment or reassessment service provider of potential termination;
(b) Assist the consumer in developing a resolution and prevention plan;
(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;
(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
(e) Assist the consumer in transitioning back to traditional ABI services.
(10) Upon an involuntary termination of CDO services, the department shall:
(a) Notify a consumer in writing of its decision to terminate the consumer’s CDO participation; and
(b) Except in a case where a consumer failed to pay patient liability, inform the consumer of the right to appeal the department’s decision in accordance with Section 10 of this administrative regulation.
(11) A CDO provider shall:
(a) Be selected by the consumer;
(b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
(c) Be eighteen (18) years of age or older;
(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
(e) Be able to communicate effectively with the consumer, consumer representative, and the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 260.030 and on the needs of the consumer;
(f) Be approved by the department;
(g) Maintain and submit timesheets documenting hours worked; and
(h) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.
(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.
(13) The department shall establish a budget for a consumer based on the individual’s historical costs in any Medicaid waiver program minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer’s budget shall equal the average per capita historical costs of an ABI [long-term care] waiver recipient participating in the ABI waiver program established by 307 KAR 3:090 minus five (5) percent.
(b) Cost of services authorized by the department for the individual’s prior year plan of care but not utilized may be added to the budget if necessary to meet the individual’s needs.
(c) The department may adjust a consumer’s budget based on
the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.
(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:
1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and
2. The department approves the adjustment.
(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:
1. If the proposed services are necessary to prevent imminent institutionalization;
2. The cost effectiveness of the proposed services; and
3. Protection of the consumer's health, safety, and welfare.
4. A significant change has occurred in the recipient's:
   a. Physical condition resulting in additional loss of function or limitation to activities of daily living and instrumental activities of daily living;
   b. Natural support system; or
   c. Environmental living arrangement resulting in the recipient’s relocation.
(f) A consumer’s budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.
(15) A support broker shall:
(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;
(b) Be available by phone or in person to a consumer twenty-four (24) hours per day, seven (7) days per week to assist the consumer in obtaining community resources as needed;
(c) Comply with applicable federal and state laws and requirements;
(d) Continually monitor a consumer’s health, safety, and welfare; and
(e) Complete or revise a plan of care using person-centered planning principles.
(16) For a CDO participant, a support broker may conduct an assessment or reassessment.
(17) Financial Management Services shall:
1. Include managing, directing, or dispersing a consumer's funds identified in the consumer’s approved CDO budget;
2. Include payroll processing associated with an individual hired by a consumer or the consumer's representative;
3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;
4. Be performed by an entity:
   a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
   b. With at least two (2) years of experience working with acquired brain injury.
5. Include preparing fiscal accounting and expenditure reports for:
   a. A consumer or consumer's representative; and
   b. The department.

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

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>1 month</td>
<td>$375.00 - limited to one (1) unit per member per month</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>15 minutes</td>
<td>$5.56 - limited to 160 units per member, per calendar week</td>
</tr>
<tr>
<td>Resp. Care</td>
<td>5 minutes</td>
<td>$4.00 - limited to 5760 units, equal to 1440 hours, per member, per calendar year</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>15 minutes</td>
<td>$3.19 - limited to 160 units per member, per calendar week</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>15 minutes</td>
<td>$4.03 - limited to 160 units per member, per calendar week alone or in combination with supported employment services.</td>
</tr>
<tr>
<td>Supported Employment</td>
<td>15 minutes</td>
<td>$7.96 - limited to 160 units per member, per calendar week alone or in combination with adult day training</td>
</tr>
<tr>
<td>Behavior Programming</td>
<td>15 minutes</td>
<td>$33.61 - limited to 80 units per member, per calendar month for the first three (3) months; after initial three (3) months limited to forty-eight (48) units per member, per month</td>
</tr>
<tr>
<td>Counseling - Individual</td>
<td>15 minutes</td>
<td>$23.84 - limited to 52 units per member, per month(sixteen-(16)-units-per-member-per-day).</td>
</tr>
<tr>
<td>Counseling - Group</td>
<td>15 minutes</td>
<td>$5.75 - limited to 48 units per member, per calendar month</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>15 minutes</td>
<td>$25.90 - limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>15 minutes</td>
<td>$28.41 - limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Specialized Medical Equipment and Supplies (see subsection (2) of this section)</td>
<td>Per Item</td>
<td>As negotiated by the department</td>
</tr>
<tr>
<td>Environmental Modification</td>
<td>Per Modification</td>
<td>Actual cost not to exceed $2000 per member, per</td>
</tr>
<tr>
<td>Service Type</td>
<td>Description</td>
<td>Rate</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Supervised Residential Care Level I</td>
<td>(1) calendar day</td>
<td>$200.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Supervised Residential Care Level II</td>
<td>(1) calendar day</td>
<td>$150.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Supervised Residential Care Level III</td>
<td>(1) calendar day</td>
<td>$75.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Nursing Supports</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 28 units per member, per calendar week</td>
</tr>
<tr>
<td>Family Training</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 8 units per member, per calendar week</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Assessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Assessment/Reassessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Consumer Directed Options:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home and Community Supports</td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget</td>
<td></td>
</tr>
<tr>
<td>Community Day Supports</td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget</td>
<td></td>
</tr>
<tr>
<td>Goods and Services</td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved consumer budget</td>
<td></td>
</tr>
<tr>
<td>Support Broker</td>
<td>One (1) unit equal to one (1) calendar month</td>
<td>$375.00 - Limited to one (1) unit per member, per calendar month</td>
</tr>
<tr>
<td>Financial Management Services</td>
<td>Fifteen (15) minutes</td>
<td>$12.50 (not to exceed eight (8) units or $100.00 per month)</td>
</tr>
</tbody>
</table>

(b) Specialized medical equipment and supplies shall be reimbursed on a per item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:
1. They are not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and
2. They are provided to an individual participating in the ABI waiver program.

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

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

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

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

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

(7) Records Maintenance. A participating provider shall:
(a) Maintain fiscal and service records for a period of at least six (6) years; and
(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to subsection (1) of this section or 907 KAR 1:672, Sections 2, 3, and 4; and
(c) Upon request, make available service and financial records to a representative or designee of:
1. Commonwealth of Kentucky, Cabinet for Health and Family Services or its designated agent;
2. United States Department for Health and Human Services, Comptroller General;
3. United States Department for Health and Human Services, Centers for Medicare and Medicaid Services (CMS);
4. General Accounting Office;
5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

Section 10. Electronic Signature Usage. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An ABI long term waiver provider which chooses to use electronic signatures shall:
(a) Develop and implement a written security policy which shall:
1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form which shall:
1. Be completed and executed by each individual using an electronic signature;
2. Authorize the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
(c) Provide the department with:
1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original signed signature immediately upon request.

Section 11. Appeal Rights. (1) An appeal of a department
decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:553.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation:
(a) Regarding a provider’s reimbursement shall be in accordance with 907 KAR 1:671, Sections 8 and 9; or
(b) Not regarding a provider’s reimbursement shall be in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP-10, Physician Recommendations for Waiver Services", July 2006 edition;
(b) "MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABJ/SCL Program", July 2006 edition;
(c) "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008 edition;
(d) "MAP-042, Incident Report", July 2008 edition;
(e) "MAP-95, Request for Equipment Form", June 2006 edition;
(f) "MAP-109, Plan of Care/Prior Authorization for Waiver Services", July 2008 edition;
(g) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008 edition;
(h) "MAP-351, Medicaid Waiver Assessment", July 2008 edition;
(i) "MAP-2000, Initiation/termination of Consumer Directed Option (CDO)", July 2008 edition;
(j) "Mayo-Portland Adaptability Inventory-4", March 2003 edition;
(k) "Person Centered Planning: Guiding Principles", March 2005 edition; and

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: February 11, 2009
FILED WITH LRC: February 12, 2009 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5EB, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Bland or Diane Pratt (502) 564-5560

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the coverage and reimbursement provisions related to home- and community-based waiver services for individuals with acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage and reimbursement provisions relating to acquired long term care waiver services in order to provide an alternative to institutional care for individuals with ABI who require maintenance services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage and reimbursement provisions relating to acquired brain injury long term care waiver services to provide an alternative to institutional care to individuals with acquired brain injury who require maintenance services.

(2) If this amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment after comments deletes any reference to highly restrictive procedures; inserting a safeguard - the same as established in the supports for community living (SCL) waiver program - requiring care managers to continue to provide supports for an individual being involuntarily terminated from the ABI long-term care waiver until alternative services or other placement for the individual is secured; - inserting prohibitions against prone or supine restraints, corporal punishment, seclusion, verbal abuse, or any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; revising the consumer-directed option (CDO) budget to be based on the individual's Medicaid waiver program (any waiver) historical costs minus 5% and that if no historical costs exist, the budget shall equal the average per capita historical costs of an ABI waiver participant participating in the ABI waiver established by 907 KAR 3:909 minus 5% (previously the regulation stated that a consumer's budget would be based on ABI long-term care waiver historical costs; however, the waiver is new and no such historical costs exist; deleting the eligibility requirement that an individual must maintain progress as measured by the assessment tool is acceptable under this waiver; clarifying that support broker availability means in person or by phone; deleting transition plan provisions from the regulation; inserting a requirement that behavioral service providers must have at least one (1) year of behavior specialist experience or document completed coursework regarding learning and behavior principles and techniques; inserting a section establishing electronic signature usage provisions; relaxing some of the summary/notes administrative burden; removing requirements that occupational therapy, physical therapy and speech therapy do more than maintain as maintenance is acceptable; revising the individual counseling limit from 16 units per member per day to 52 units per member per calendar month and miscellaneous other policy clarification.

(b) The necessity of the amendment to this administrative regulation: The amendment after comments is necessary to ensure the health, safety and welfare of individuals; to remove inadvertent barriers to program participation (such as not allowing certain care to only be for maintenance purposes); and to clarify policies.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by ensuring the health, safety and welfare of individuals; by removing inadvertent barriers to program participation (such as not allowing certain care to only be for maintenance purposes); and by clarifying policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the statutes by ensuring the health, safety and welfare of individuals; by removing inadvertent barriers to program participation (such as not allowing certain care to only be for maintenance purposes); and by clarifying policies.

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

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
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(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities choosing to provide ABI services and receive Medicaid reimbursement are required to be enrolled as a Medicaid provider. During the first year, the budget allows for 50 individuals with ABI to receive these waiver services. During the following year, the budget allows for an additional 100 individuals to receive these waiver services, totaling 150 individuals.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The new administrative regulation offers an alternative to institutional care for individuals that have reached a plateau in their rehabilitation level and require maintenance services to avoid institutionalization and to live safely in their community. The long-term nature of the program will complete the continuum of care and complement Kentucky's existing acute brain injury waiver program which focused on intensive rehabilitation services. The awaiting program also provides the option for self-directed services for individuals.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates a cost of approximately $2.3 million during the state fiscal year 2009 to serve 50 individuals with this program.

(b) On a continuing basis: DMS estimates a cost of approximately $12.1 million during the state fiscal year 2010 as a result of enrolling an additional 100 individuals (for a total enrollment of 150 individuals) in the program.

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

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

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

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all those individuals or entities regulated by it. Tiering was not appropriate for this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services (DCBS), Department for Aging and Independent Living (DAIL), Area Agencies on Aging (AAA), Protection and Advocacy (P&A), and Vocational Rehabilitation will be impacted by this administrative regulation. This amendment will affect Medicaid eligible individuals diagnosed with ABI who choose to access these waiver services.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 203.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home- and community-based services waivers.

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

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

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

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Guardianship
(Amended After Comments)


STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.6001(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.0501 requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes referral requirements for adult guardianship.

Section 1. Definitions. (1) *Adult* is defined by KRS 209.020.
(2) *Conservator* is defined by KRS 387.5101(1).
(3) *Court* means for the purpose of this administrative regulation a court of competent jurisdiction.
(4) *Disabled* is defined by KRS 387.5101(8).
(5) *Division* means the Division of Guardianship.
(6) *Fiduciary Services* means a central office branch under the Division of Guardianship.
(7) *Field Services Branch* means a central office branch under the Division of Guardianship.
(8) *Informed or support* means:
(a) A family member;
(b) A friend;
(c) A neighbor in the life of the individual needing assistance;
or
(d) Another interested person or entity.
(9) *Inquiry* means an individual or entity requesting information regarding guardianship services.
(10) *Least restrictive alternatives* means an alternative to guardianship that have been exhausted such as:
(a) Power of attorney;
(b) Living wills;
(c) Advanced directives;
1. Least restrictive alternatives to guardianship have been exhausted;
2. All options for informal network of support have been explored;
3. There is a substantiated protective need;
4. There is a need for protective services;
5. The individual appears to lack sufficient understanding or capacity to make or communicate an informed choice to:
   a. Manage personal affairs;
   b. Manage financial affairs; or
   c. Carry out activities of daily living;
6. If another individual or entity may be willing and able to serve as guardian or why the individual or entity is unable to serve;
7. The degree of guardianship that is appropriate to meet the substantiated ongoing protective needs of the individual;
8. The positive benefit to the individual that the appointment of a guardian would provide.

(3) If the division determines that there is a case for guardianship, the division shall, except for an emergency case, send to the referral source the following within ten (10) working days of the determination:
(a) A current blank version of an AOC-740, Petition to Determine If Disabled, issued by the Administrative Office of the Courts and available at www.courts.ky.gov; and
(b) A current blank version of a GFS-1, Guardianship Information Referral Form;
(c) A cover letter instructing the referral source to complete and return the forms specified in paragraphs (a) and (b) of this subsection to the division.

(4) If the referral source completes the forms specified in subsection (3)(a) and (b) of this section, the division shall complete, sign, and notarize:
   (a) An AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at www.courts.ky.gov; and
   (b) The AOC-745, Petition to Determine If Disabled specified in subsection (3)(a) of this section.

(5) The division shall return the completed forms specified in subsections (3)(a), (b) and (4) of this section with a cover letter to the referral source instructing the referral source to file the documents with the court.

(6) If the division is notified of a hearing from the court, division staff shall attend the hearing to meet the respondent and gather information concerning the case.

Section 4. Guardianship Referral for Individuals Who Have Been Adjudicated. (1) Within ten (10) working days of a referral, the division shall send to the referral source:
(a) A blank AOC-795, Petition for Relief Modification or Termination, issued by the Administrative Office of the Courts and available at www.courts.ky.gov;
(b) The GFS-1, Guardianship Information Referral Form; and
(c) Cover letter instructing the referral source to complete the forms specified in paragraphs (a) and (b) of this subsection.

(2) The referral source shall complete the forms listed in subsection (1)(a) and (b) of this section and return the forms to the division.

(3) The division shall review the documentation from the referral source and requests any additional information needed for the division to complete the application process.

(4) The division shall complete, sign, and notarize an AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at www.courts.ky.gov, requesting that the cabinet be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combination thereof.

(5) The division shall return the forms specified in subsections (1)(a), (b) and (4) of this section with a cover letter instructing the referral source to file the forms with a court.

(6) If the division is notified of a hearing from the court, division staff may attend the hearing to meet the respondent and gather information concerning the case.

(7) The court may require division staff attending court to be sworn in as successor guardian.
Section 5. Nonacceptance for a Guardianship Referral. (1) If the referral does not meet the eligibility requirements of Section 2 and acceptance criteria in Section 3(2)(b) of this administrative regulation, the petitioner may consult with the division for explanation and referral to other services.

(2) Guardians for disabled adults are appointed pursuant to KRS 387.550 to 387.590.

Section 6. Opening a Case. (1) Upon notification of guardianship appointment and if the cabinet has no current involvement with the ward, a cabinet employee such as a nurse consultant, doctor, ombudsman, social worker, or guardianship social staff shall:

(a) Contact the ward or provider; and
(b) Assess the ward's needs within two (2) working days of an emergency guardianship appointment.

(2)(a) Once the cabinet is appointed as guardian of a ward, the division shall review the Administrative Office of the Court's, AOC-785, Disability Judgment, and AOC-775, Order of Appointment of Fiduciary, or any other legal document issued by the court to ensure the cabinet's authority is clear and concise.

(b) If the information is not clear and concise, the division shall ask the court for clarification following the process established by Individual Jurisdiction.

(3)(a) Upon notification of an emergency appointment, the division shall immediately assign a case for an emergency appointment to guardianship staff.

(b) If the appointment is not an emergency, the division shall assign the case to guardianship staff within ten (10) working days of notification from the court.

(4) If the cabinet has current involvement, the Field Services Branch shall meet the ward and assess his or her needs within:

(a) Five (5) working days for unsupervised wards for emergency appointments and current cabinet involvement; or
(b) Thirty (30) working days of case assignment for a ward in a supervised setting by:
1. Visiting the ward to assess current physical condition and needs;
2. Reviewing the ward's records at his or her place of residence; and
3. Consulting with a care provider concerning the ward's care; and
(5) Within thirty (30) working days of appointment, the division shall:

(a) Collect and verify names, addresses, and telephone numbers of the ward's relatives and other pertinent contacts;
(b) Determine if the ward has:
1. A will;
2. A burial policy;
3. An end-of-life decision document;
4. Durable power of attorney; or
5. Another power of attorney;
(c) Obtain an original or copy of the ward's wishes if the family has knowledge of the ward's wishes;
(d) Inform the Fiduciary Services Branch of any additional financial information obtained during the assessment;
(e) Secure and provide services as necessary for the protection and well being of the ward and his or her estate;
(f) Make a decision, in consultation with the Fiduciary Services Branch, regarding benefits and financial services; and
(g) Document a face-to-face visit.

(6) The division shall:

(a) Obtain information regarding assets and liabilities, including an inventory of:
1. Personal property and copies of a deed;
2. A mortgage;
3. A note;
4. A lien and encumbrance;
5. Tax documentation including income tax information;
6. A bank statement;
7. A picture of personal belongings; and
8. A copy of a facility personal needs statement; and
(b) Forward all financial information, including blank checks from the ward's checking account, to the Fiduciary Services Branch.

(7) The division and one (1) additional cabinet employee, if available, shall complete a physical inventory of all personal and real property.

(8) At the direction of the court, the division shall determine if it is in the best interest of the ward to liquidate or surrender a life insurance policy owned by the ward.

(9) Within thirty (30) working days of court notification of the cabinet's appointment authorizing the management or disposal of the ward's assets, the division shall:

(a) Obtain a copy of the deed for any real property owned or co-owned by the ward;
(b) Obtain a copy of a mortgage or lien on the property;
(c) Determine if the ward's real property is inhabited by someone other than the ward; and
(d) Determine if there is a tenant and:
1. Contact the tenant about the cabinet's appointment;
2. Determine if there is a written lease and, if so, request a copy from the tenant;
3. Advise the tenant that a rent payment shall be made payable to CHF and the name of the ward and mailed to the Fiduciary Services Branch at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621;
4. Advise the tenant of the cabinet's need to make a walk through inspection of the property; and
5. Complete the walk through inspection with the Field Services Branch and one (1) additional cabinet employee, if available.

(10) If the property is vacant, guardianship staff shall visit the ward's property once, with the additional cabinet employee, to secure the ward's personal and real property.

(11)(a) Unless there is lack of a ward's financial resources, the division shall secure and maintain insurance coverage on any real property.

(b) The division shall notify the court if it is not possible to maintain insurance coverage on any real property.

(12) The division shall contact the Property Valuation Administrator in the county where the real estate is located to determine the property evaluation and to see if taxes are owed and change the address for the ward's tax statement to the appropriate Field Services Branch's office address.

(13) The division shall attach a copy of the inventory of personal property to an event in the electronic case record and file the original inventory in the ward's hard copy case record.

(14) Upon receipt of the following items, the Field Services Branch shall forward the items to the Fiduciary Services Branch by certified mail insuring any negotiable items or items of value for the estimated value as follows:

(a) Any small items of value such as jewelry or coins; and
(b) Original documents related to finances or personal assets such as:
1. A will;
2. A burial policy;
3. Stocks;
4. Bonds;
5. Insurance policy; or

(15) The Field Services Branch shall document in the ward's case record an item to be transferred to the Fiduciary Services Branch and the disposition of each item.

(16) If a ward is not residing in the ward's home, or a tenant is not residing in the ward's home, the Field Services Branch shall contact a utility company providing services to:

(a) Change the billing address to an appropriate Field Services Branch's office address; and
(b) Request that the utility be disconnected, if appropriate.

(17) The Field Services Branch and Fiduciary Services Branch shall determine whether the property is to be maintained as rental property or to be sold and, if sold, shall follow the provisions of KRS Chapter 389.

(18) If the ward does not have sufficient liquid assets to meet the ward's needs, the Field Services Branch shall consult with the Fiduciary Services Branch and request the ward's assets be liquidated and deposited into the ward's account.

(19) If the ward has a safety deposit box, the Field Services
Branch shall:
(a) Contact the financial institution where the safety deposit box is located;
(b) Review the ward's financial resources and determine if funds are available to drill the safety deposit box if the cabinet does not have a key;
(c) Relay this information to the Fiduciary Services Branch;
(d) Attend the opening of the safety deposit box with one (1) additional cabinet employee, if available; and
(e) Inventory the box's content.
(20) If the ward does not have funds available to drill the safety box and the cabinet does not have a key, the Field Services Branch shall not pursue opening the safety deposit box.

Section 7. Confidentiality. (1) The cabinet shall ensure the confidentiality of all records and reports that directly or indirectly identity current or former wards.
(2) Prior to release of Information, the cabinet shall use discretion in considering whether:
(a) Disclosure of the information is permissible under federal and state statutes, including the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164;
(b) The person requesting the information is an authorized representative of a federal, state, or local government agency with a legitimate interest in the ward;
(c) The person requesting the information is a representative of an agency with which the cabinet has an agreement assuring the confidentiality of all shared information and the agency has a legitimate interest in the ward;
(d) Disclosure of the information is necessary and relevant to the issue being addressed such as:
1. Application for benefits;
2. Insurance information;
3. Sale of property;
4. Taxes;
5. Services;
(e) Disclosure of the information is approved by the ward if the case involves partial guardianship;
(f) Disclosure of the information is beneficial for the ward such as release of information to concerned family members or to a person applying to be appointed as successor guardian;
(g) There is a court order authorizing the release of information; or
(h) There is a subpoena requesting the records.
(3) If the cabinet decides that the request for information does not meet the criteria for disclosing information and the request is special to the ward:
(a) Guardianship file, the cabinet shall refer the person requesting information to an open records process; or
(b) Court record, the cabinet shall refer the person requesting Information to the District Court having jurisdiction.
(4) General media and publication requests for wards may be made to the cabinet.
(5) The cabinet may grant permission for publication of the ward's name, photograph, or image if:
(a) The ward grants permission;
(b) There is no harm or detrimental effect to the ward; and
(c) The ward is not identified as a ward of the cabinet.
(6)(a) In order to document abuse, neglect, injury, treatment, or for identification purposes, a provider shall seek permission of the cabinet for the ward's photographs.
(b) To meet these requirements, the cabinet:
1. May give consent for such photo requests; and
2. Shall ensure the requesting service provider uses photographs only at the discretion of the division.
(7)(a) Requests for a ward's participation in research projects may be made to the cabinet.
(b) The cabinet shall:
1. Shall not give permission for the ward's participation in any research that is experimental, is a blind study, or involves invasive or intrusive procedures;
2. Shall seek the ward's permission to participate;
3. May give permission for participation in research that consists of a ward interview if the:
   a. Cabinet's internal review board has reviewed and approved the research project in accordance with KAR 920 KAR 1:060; and
   b. Ward agrees to participate; and
4. Shall ensure that any interview of a ward related to a research request terminates immediately if the ward expresses a desire not to continue participation.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 910 KAR 2:020 Referral Process for Adult Guardianship.

DEBORAH S. ANDERSON
JANIE MILLER, Secretary
APPROVED BY AGENCY: February 12, 2009
FILED WITH LRC: February 12, 2009 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIMING STATEMENT
Contact Person: Shirley Eldridge 564-6930 x 3432
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for referring a potential ward of the cabinet who is adjudicated or not adjudicated disabled by the court.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards in which an entity can make a referral to the cabinet to be appointed limited guardian, limited conservator, or conservator for a ward.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the cabinet to be appointed as limited guardian, guardian, limited conservator, or conservator for a ward.
(d) How administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to affected entities in making a referral to the cabinet for the adult guardianship or conservatorship programs pursuant to KRS 387.600(1).
(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 amended after comments regulation clarifies that guardians for disabled adults are appointed pursuant to KRS 387.500 to KRS 387.990, and removes the requirement to be a legal U.S. citizen for eligibility.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary for the public to better understand the Cabinet's referral process for guardianship.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments clarify the Cabinet's referral process for adult guardianship before being appointed guardian of a ward pursuant to KRS 387.600(1).
(d) How the amendment will assist in the effective administration of the statutes: The amendments will provide guidance to affected entities in making a referral to the cabinet for the adult guardianship or conservatorship programs pursuant to KRS 387.600(1).
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Departments for Aging and Independent Living, Community Based Services; Mental Health, Developmental Disabilities and Addiction Services. There are approximately 160 supports for community living facilities, 92 family group homes; 81 personal care homes. Any relative or caretaker of a ward, hospital, or psychiatric hospital; any Individual making a referral could be
affected by this administrative regulation; and potential ward of the cabinet.  

(4) Provide an analysis of how the entities identified in question (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 departments, providers, relative or caretaker of a ward, hospitals, or other individual specified in question (3) may refer a potential ward to the cabinet to receive services through the adult guardianship or conservatorship programs by contacting the division first either by phone or in writing. If a case for guardianship is determined, an entity shall follow the division's instructions on how to file appropriate documents with the court for a ward to be adjudicated disabled, or if already adjudicated, file documents with the court for the cabinet to be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combination thereof. The amendments will not change this process.  

(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 to the providers or individuals making a referral specified in question (3).  

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More efficient and appropriate referrals and better service delivery for a ward of the cabinet. The referral process will help filter out the individuals who do not need guardianship and also streamline the process for those that do need guardianship.  

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

(a) Initially: The department currently provides services in this administrative regulation; therefore, no additional cost.  

(b) On a continuing basis: The department currently provides services in this administrative regulation; therefore, no additional cost.  

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees established in this administrative regulation. No increase in 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 or indirectly increases fees.  

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for the state or local government with this administrative regulation.  

(c) How much will it cost to administer this program for the first year? The department currently provides services in this administrative regulation; therefore, no additional cost.  

(d) How much will it cost to administer this program for subsequent years? The department currently provides services in this administrative regulation; therefore, 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  
Department for Aging and Independent Living  
Division of Guardianship  
(Amended After Comments)  

910 KAR 2:030. Accounting provisions for adult guardianship.  


STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to promote, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes accounting provisions for adult guardianship.  

Section 1. Definitions. (1) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.  

(2) "Budget" means a financial spending plan that estimates revenues and expenditures of an individual for a stated period of time by examining and analyzing available financial information.  

(3) "Division" means the Division of Guardianship.  

(4) "Emergency" means unanticipated expenses such as:  

(a) Medical needs not paid by Medicare or Medicaid;  

(b) Home repair; or  

(c) Transportation for a medical appointment.  

(5) "Fiduciary Services Branch" means a central office branch under the Division of Guardianship.  

(6) "Field Services Branch" means a central office branch under the Division of Guardianship.  

(7) "Order of appointment" means a type of guardianship appointment pursuant to KRS 387.590(6).  

(8) "Ordinary and necessary expenses" means those expenses that are requested by a Field Services worker to maintain a client's quality of life such as clothing, snacks, and non-medical transportation.  

(9) "Personal needs" means an individual's need to purchase varied goods such as:  

(a) Clothing;  

(b) Personal care items; or  

(c) Social support items such as:  

1. Telephone;  

2. Stationery;  

3. Books;  

4. Snacks; or  

5. Occasional outings.  

(10) "Personal spending accounts" is defined by 42 C.F.R. 194A.050(1)  

- 2117 -
483.10.

(11) "Provider" means a facility or entity providing services for a ward such as:
(a) Self;
(b) Caretaker;
(c) Family;
(d) Group home placement;
(e) Hospital;
(f) Psychiatric hospital.
(12) "Ward" is defined by KRS 387.510(15).
(13) "Work allowance" means a portion of a ward's wage check sent to the ward to use for personal spending.

Section 2. Budget. (1) Within thirty (30) working days of placement, the division shall complete a budget process for a ward.
(2) The budget process shall include:
(a) The ward's monthly income and expenses;
(b) Other expenses of the ward that are on a monthly basis to calculate a monthly amount;
(c) The ward's net amount; and
(d) Transfer of the completed budget to the Fiduciary Services Branch for implementation.

Section 3. Work Allowances. The Field Services Branch shall complete a budget for a ward based on Individual needs, taking into account Social Security Administration work incentive rules, 42 U.S.C. 1320b-20.1. (1) Complete a budget for a ward with up to sixty (60) percent of the ward's work allowance included on a monthly basis, and
(2) Hold forty (40) percent of the ward's earned wages in the ward's account to meet extra expenses.

Section 4. Quarterly Reports and Personal Spending Accounts. (1)(a) On quarterly basis, 42 C.F.R. 483.10 and 907 KAR 1:145 requires an accounting report of a ward's personal needs income and expenses for Long Term Care and Supports for Community Living (SCL) providers.
(b) The division shall establish the maximum allowable balance to be held in these accounts.
(2) The division shall review the ward's account for a discrepancy and ensure:
(a) The accounting report includes all personal needs income received on behalf of the ward;
(b) Receipts are attached to the accounting report including special requests that may have been initiated by the provider such as:
1. Clothing;
2. Furniture; and
3. Electronics;
(c) All personal needs expenditures incurred for that ward are ordinary and necessary; and
(d) Balances do not exceed $100.
(3) If no discrepancies are found, the Field Services Branch shall:
(a) Ensure balance is in compliance and appropriate backup receipts are attached to the accounting report; and
(b) Sign, date, and write "approved" on the accounting report.
(4) If a discrepancy is found, the Field Services Branch shall:
(a) Sign, date, and write disapproved on the accounting report with the reason the statement is not approved; and
(b) Contact the provider to resolve the issue.
(5) Upon completion, the Field Services Branch shall mail the review to the Fiduciary Services Branch for final review and processing.
(6) The Field Services Branch shall notify the Fiduciary Services Branch to request a refund, modify the amount, suspend, or resume the disbursement of personal needs funds for the ward as necessary.
(7) If the Field Services Branch indicates a refund is appropriate, the Fiduciary Services Branch shall generate a letter to the provider asking that any funds over $100 be refunded to the cabinet for the ward by the end of the month.

Section 5. Negotiable Checks. (1) The Field Services Branch shall promptly forward all checks and money orders received on behalf of a ward to the Fiduciary Services Branch by certified mail.
(2) Any cash received on behalf of a ward shall be converted to a money order by the Field Services Branch and forwarded to the Fiduciary Services Branch as specified in subsection (1) of this section.
(3) Each field services office shall have and maintain a tracking system for cash and checks received on behalf of a ward.

Section 6. Personal Checking Accounts of a Ward. (1) Establishment of a checking account for a ward shall be at the direction of the court.
(2) The Field Services Branch shall ensure that the facility where the ward resides is aware that:
(a) An individual savings or checking account shall not be established for the ward unless the account is listed in the provider's name for the benefit of the ward; and
(b) The ward shall not legally write or endorse checks from this account unless directed by the court.

Section 7. Checks Sent to a Ward as Payee. (1) The Field Services Branch shall ensure that a ward of the cabinet does not receive checks made payable directly to them unless:
(a) The court has directed that the ward may receive and endorse checks; or
(b) The order of appointment is for a limited type of appointment that does not:
1. Specify that the ward shall not execute instruments; or
2. Enter into a contractual relationship.
(b) Both of these shall occur if a check is endorsed.
(2) Unless the ward can endorse a check through an AOC-775, Order of Appointment of Guardianship that is issued by the Administratively Office of the Court and available at www.courts.ky.gov, the division shall ensure that no payment requests with the ward as payee is made.

Section 8. Requests for Payments and Supporting Documentation. A ward's expenses shall be paid through a payment request system that has been developed by the Fiduciary Services Branch to meet accounting internal control best practice and reporting required by the courts.

Section 9. Medical Payments and Medical Spend Downs, Pharmacy, and Health Insurance Premium Payments. (1) For a ward's expenses such as medical, medical spend down, pharmacy and health insurance premium payments, the Field Services Branch shall forward an expense statement to the Fiduciary Services Branch for review and payment.
(2) The Field Services Branch shall submit to the Fiduciary Services Branch a request for medical expenses not reimbursable or covered by insurance such as:
(a) Glasses;
(b) Diabetic shoes; or
(c) Dental services.

Section 10. Provider Payments. (1) The Field Services Branch shall:
(a) Review a provider statement received; and
(b) Ensure that the provider statement does not include inappropriate expenses such as medical, medical co-payments, pharmacy charges, or personal needs unless these expenses had been pre-approved by the Field Services Branch.
(2) After reviewing a statement for a provider payment, the Field Services Branch shall forward the statement on behalf of a ward to the Fiduciary Services Branch for review and payment.

Section 11. General Expenses. (1) General expense payments may include:
(a) Additional personal needs such as:
1. Birthday;
2. Christmas; and
3. Change in seasonal needs; and
(b) Other items such as:
1. Furniture;
2. Vacation;
3. Outing;
4. Utilities;
5. Cable television; and
6. Household item.

(2) For all general expense statements, the Field Services Branch shall analyze the request or statement to ensure:
(a) It is an expense of the ward;
(b) The expense is in the best interest of the ward; and
(c) The expense reflects what was requested by the ward through:
   1. Self;
   2. Case manager of the ward; or
   3. The Field Services Branch.

(3)(a) Extra personal needs shall be personal needs that exceed the budgeted or regulatory personal needs such as for Personal Care in accordance with 921 KAR 2:015 and Long Term Care facilities in accordance with 907 KAR 1:655 with already being sent on a monthly basis.
(b) The Field Services Branch may request the extra personal needs specified in paragraph (a) of this subsection at any time.
(c) The Field Services Branch shall follow the procedures for requests for payment and supporting documentation in accordance with Section 6 of this administrative regulation.

(4) The Fiduciary Services Branch shall review and approve any payment request exceeding $500 dollars or over.

(5) The Fiduciary Services Branch shall approve or disapprove a payment request based on:
   (a) If funding is available;
   (b) The need;
   (c) Back-up documentation supporting the request supports ordinary and necessary expenses.

Section 12. Burial Policies and Related Issues. (1) If funds are available beyond providing for the ward’s needs, the Field Services Branch shall establish preneed burial arrangements for the ward.

(2) Prior to purchasing a burial policy or making any other funeral arrangements, the Field Services Branch shall:
   (a) Confirm that funds in the ward’s account are available for burial by contacting Fiduciary Services;
   (b) Take into consideration a ward’s desires and cultural and religious views;
   (c) Review a ward’s records to:
      1. Assess what burial policies or arrangements have previously been acquired;
      2. Ensure the use of the same funeral home;
      3. Determine the value of an existing policy so the total value does not exceed Medicaid and Social Security Administration (SSA) standards; and
   (d) Review the adequacy of the arrangements, and if the arrangements are not adequate verify with the Fiduciary Services Branch that the funds available to:
      a. Add to the burial policy;
      b. Procure a monument or plot;
      c. Make any other necessary burial arrangements;
   (d) Determine that all needs of the ward are being met and that a minimum of fifty (50) dollars in the ward’s account is available for an emergency;
   (e) Review the ward’s accounts to ensure bills have been paid;
   (f) The Field Services Branch may discuss with the ward, relative, or other individual with knowledge of the client’s wishes concerning burial arrangements.

(3) If the Field Services Branch is unable to obtain information regarding a burial preference from the ward, relative, or other individual with knowledge of the client’s wishes, the Field Services Branch shall:
   (a) Examine the ward’s record for information pertaining to burial;
   (b) Decide the location for the burial and the funeral director who will handle the arrangements.

(4) If purchasing a burial contract, the Field Services Branch shall:
   (a) Contact a funeral director to initiate the process of establishing a burial contract;
   (b) Submit the contract to the Fiduciary Services Branch to ensure that the contract meets Medicaid and SSA standards;
   (c) Upon receipt of a check from the Fiduciary Services Branch, forward the check and contract signed by the Field Services Branch on behalf of the ward, to the funeral home; and
   (d) Send a copy of the signed and completed contract to the Fiduciary Services Branch.

(5) If a ward has lost any body part due to amputation or surgery and it is appropriate to bury this body part with the ward, arrangements shall be made by the Field Services Branch with the funeral home selected to ensure the body part is preserved for burial with the ward’s body at the time of death. 910 KAR 2:030 Accounting Provisions for Adult Guardianship

DEBORAH S. ANDERSON, Commissioner
JANE MILLER, Secretary
APPROVED BY AGENCY: February 12, 2009
FILED WITH LRC: February 12, 2009 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930 x 3432

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes accounting provisions for adult guardianship.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards to ensure a ward’s financial spending plan.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the cabinet to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides administration of a ward’s accounting through the cabinet’s adult guardianship and conservatorship programs pursuant to KRS 387600(1).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amended after comments regulation establishes that when considering a ward’s work allowance a completed budget be based on the ward’s needs and taking into account the Social Security Administration work incentive rules, 42 U.S.C. 1320b-20.
   (b) The necessity of the amendment to this administrative regulation: To ensure a ward’s financial spending plan.
   (c) How the amendment conforms to the content of the authorizing statutes: If the cabinet is appointed conservator or guardian of a ward in accordance with KRS 387.600(1), the cabinet has the responsibility to oversee a wards’ accounting.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment provides administration of a ward’s accounting through the cabinet’s adult guardianship and conservatorship programs pursuant to KRS 387600(1).
   (e) How the amendment conforms to the content of the authorizing statutes: If the cabinet is appointed conservator or guardian of a ward in accordance with KRS 387.600(1), the cabinet has the responsibility to oversee a wards’ accounting.
   (f) How the amendment will assist in the effective administration of the statutes: The amendment provides administration of a ward’s accounting through the cabinet’s adult guardianship and conservatorship programs pursuant to KRS 387600(1).
   (g) How the amendment conforms to the content of the authorizing statutes: If the cabinet is appointed conservator or guardian of a ward in accordance with KRS 387.600(1), the cabinet has the responsibility to oversee a wards’ accounting.
   (h) How the amendment will assist in the effective administration of the statutes: The amendment provides administration of a ward’s accounting through the cabinet’s adult guardianship and conservatorship programs pursuant to KRS 387600(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 160 Supports for Community Living providers. Any medical or pharmacy providers, any funeral home may be affected by this administrative regulation. A ward of the cabinet will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment does not require any action from the entities identified in question (3).
   (b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3): No cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By having this administrative regulation in place, the public will have consistent information regarding the procedures ensuring a wards needs are being met and their income and assets are being used to the ward's benefit.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The department currently provides services in this administrative regulation therefore no additional cost.
(b) On a continuing basis: The department currently provides services in this administrative regulation therefore no additional cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are established in this administrative regulation. No increase in 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: No fees are established in this administrative regulation.
(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be regulated by this administrative regulation? Department for Aging and Independent Living
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 387.600(1)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.
(b) How 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.
(c) How much will it cost to administer this program for the first year? The department currently provides services in this administrative regulation therefore 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: 

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 U.S.C. 1320b-20 and 42 C.F.R. 483.10
2. State compliance standards: KRS 387.600(1)
3. Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 1320b-20 governs the work incentive rules, and on a quarterly basis, 42 C.F.R. 483.10 requires an accounting report of a ward's personal needs income and expenses for Long Term Care and Supports for Community Living providers.
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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(Amended After Comments)

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

RELATES TO: KRS Chapter 13B, Chapter 45A, 189A.010(1)(a)-(d), 211.470(3)
STATUTORY AUTHORITY: KRS 189A.050(3)(d)(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.050(3)(d)(2) requires the cabinet to promulgate an administrative regulation to provide direct services to individuals with brain injuries including long-term supportive services and training and consultation to professionals working with individuals with brain injuries. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. This administrative regulation establishes procedures for the provision of behavioral services to individuals with brain injuries.

Section 1. Definitions. (1) "Behavioral services" means services that effectively manage severe behavioral issues which occur as the result of a brain injury, as well as providing rehabilitative services for the brain injury.
(2) "Behavioral specialist" means a professional who has skills and qualifications, as specified in Section 5(3)(b) of this administrative regulation, managing severe behavioral issues which occur as the result of a brain injury, as well as providing rehabilitative services for the brain injury.
(3) "Brain injury" means an acquired or traumatic injury to the brain that affects cognitive, physical, emotional, social, or independent functioning and which necessitates supervised and rehabilitative services.
(4) "Case manager" means a professional described in Section 5(3)(b) of this administrative regulation who manages the overall development and monitoring of a recipient's plan of care.
(5) "Crisis Intervention" means a short-term intensive service of a least restrictive nature to aid an individual to regain a sense of control over an immediate situation.
(6) "Crisis stabilization unit" means a unit operated to provide short-term intensive treatment.
(7) "Department" means the Department for Aging and Independent Living.
(8) "Discharge plan" means a plan that is developed to aid a recipient in exiting from one (1) provider to another or into the community.
(9) "Emergency" means a situation in which an applicant is living in conditions that present a substantial risk of death or eminent and serious physical harm to the applicant or others.
(10) "Provider" means an individual, business agency, or facility providing brain injury services.
(11) "Recipient" means an applicant approved for services.
(12) "Residential" means a placement that assists an applicant or recipient who is unable to be managed or treated through crisis stabilization in the community.
(13) "Review team" means a team composed of three (3) program cabinet staff with professional or personal experience with brain injury or other cognitive disabilities who reviews and approves or denies an application for services.
(14) "Targeted case management" means a set of activities which assist an applicant or recipient in accessing needed medical, - 2120 -
social, education, and other supportive services.

(15) "Transitional services" means transitioning a recipient from one (1) setting to another such as for receipt of:
(a) Crisis Intervention services;
(b) Residential services;
(c) Community based provider services; or
(d) In-home environment services.
(16) "Wrap around" means a service or item, specified in Section 5(6), that enhances a recipient's ability to live in the community.

Section 2. Eligibility. (1) An applicant for services shall be eligible to receive a benefit under this program if:
(a) The applicant has a primary diagnosed brain injury;
(b) The applicant is a legal resident of Kentucky;
(c) This program is the payer of last resort; and
(d) The applicant meets the requirements for crisis intervention or residential services in accordance with subsections (2) and (3) of this section.
(2) An applicant for crisis intervention services shall:
(a) Meet the requirements of subsection (1) of this subsection and be nonMedicaid eligible; or
(b) Be Medicaid eligible receiving services under one (1) of the Medicaid AB1 Waivers and in an emergency status.
(3) An applicant for residential services shall:
(a) Meet the requirements of subsection (1) of this subsection;
(b) Be nonMedicaid eligible;
(c) Have been charged as a violent offender with the offenses listed in KRS 439.3401(1); and
(d) Be in an emergency status.
(4) An applicant or applicant's guardian or legal representative shall:
(a) Document that the applicant has no other funding source for services contained in this administrative regulation; and
(b) Provide the department with medical documentation of the applicant's brain injury including a completed DAIL-BI-020, Physician's Recommendation form signed by the applicant's physician confirming diagnosis of brain injury.
(5) The following conditions shall not be included to receive services under this administrative regulation:
(a) Strokes treatable in nursing facilities providing routine rehabilitation services;
(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;
(c) Progressive dementia;
(d) Depression and psychiatric disorders; or
(e) Mental retardation or birth defect related disorders.

Section 3. Application Process. (1) A referral for services may be made by, or on behalf of, an eligible person by contacting the department by:
(a) Telephone; or
(b) In writing such as by:
   1. Facsimile;
   2. Email; or
(2) Upon an applicant's request for services, the department shall provide the applicant with an application packet containing the following forms:
(a) DAIL-BI-010, Application for Behavioral Services; and
(b) DAIL-BI-020, Physician's Recommendation.
(3) The applicant or applicant's guardian or legal representative shall provide the department with:
(a) The completed forms specified in subsection (2) of this section;
(b) Documentation specified in Section 2(4)(a); and
(c) Other medical documentation specified in Section 2(4)(b) for processing the request for services.
(4) The department shall:
(a) Submit the completed forms and documentation to the review team who shall determine the applicant's eligibility for services; and
(b) Notify the applicant in writing of approval or denial for services.
(5) An applicant who wishes to appeal the denial of services may make a request in accordance with Section 12 of this administrative regulation.

Section 4. Review Team. (1) At least two (2) members of the review team shall not be supervised by the department's Long Term Care Branch.
(2) A review team shall:
(a) Assess the applicant's eligibility for services;
(b) Identify the applicant's need for crisis intervention or residential services;
(c) Identify potential resources to meet the applicant's need for services;
(d) Determine that this program is the payer of last resort; and
(e) Meet monthly at a minimum, or more often as needed for an emergency.
(3) The review team may approve the following behavioral services for a recipient:
(a) Crisis Intervention services that shall include:
   1. Training and consultation;
   2. Wrap around services;
   3. Targeted case management;
   4. Crisis stabilization unit;
   5. Environ mental modification; and
   6. Which shall be approved for no more than three (3) months, unless an exception to this timeframe is approved by the department.
(b) Residential services that may include:
   1. Wrap around services;
   2. Targeted case management, if applicable; or
   3. Transitional services in which a recipient:
      a. Shall return to the recipient's previous setting, upon stabilization; and
      b. May be provided additional wrap around services to assist with transitioning back to the previous setting, if funding is available.
   (4)(a) Except for an emergency as specified in Section 10(11) of this administrative regulation, an application shall be considered in the order in which it is received by the department.
   (b) To be considered at the monthly review team meeting, an application shall be received by the department no later than three (3) business days prior to the review team meeting.
(5) The review team may make a recommendation to the applicant and the department about other available resources or means to meet the applicant's needs for services and supports.
(6) A final determination from the review team shall be submitted to the department in writing not to exceed three (3) business days from the date of determination and shall contain:
(a) An approval or denial for services; and
(b) An explanation of the review team's decision and recommendations for other resources to meet the applicant's needs, if services were denied.
(7) If an applicant is determined ineligible for services, the applicant may submit to the department additional medical records or medical documentation to support the diagnosis of the injury.
(8) The department shall submit, at the next review team meeting, the additional medical information for reconsideration of eligibility determination.

Section 5. Covered Services. (1) Covered services shall be prior-authorized by the review team and provided in accordance with a plan of care.
(2) Crisis stabilization unit setting that shall include the following crisis intervention services:
(a) Establishing problem-solving abilities;
(b) Securing staff as specified in subsection (5)(b) of this section;
(c) Identifying current priority needs;
(d) Assessing functioning and coping skills; and
(e) Providing stabilization, wrap around, and transitional services.
(3) Targeted case management that shall include the following:
(a) Ensure twenty-four (24) hour availability of services;
(b) Assessment;
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2. Advocacy;
3. Reassessment and follow-up;
4. Establishment and maintenance of a recipient’s record; and
5. Crisis assistance planning;
   (c) Weekly contact with a provider and recipient to ensure the recipient’s health, welfare, and safety needs are met;
   (d) Initiation;
2. Coordination and implementation of services;
3. Monitoring of the delivery of services and the effectiveness of a plan of care; and
4. Maintaining eligibility;
   (e) Assistance with development of an individualized plan of care and updates as necessary based on changes in the recipient’s medical condition, transition, and supports;
   (f) A plan for transitional services which shall be developed within seven (7) calendar days of receiving services and update as changes occur; and
   (g) A case manager who has one (1) or more years experience working in the brain injury field and be one (1) of the following:
      1. A registered nurse;
      2. A licensed practical nurse; or
      3. An individual who has a bachelor’s or master’s degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
         a. Psychology;
         b. Sociology;
         c. Social work; or
         d. Rehabilitation counseling.
   (4) Training and consultation services:
   (a) May include:
      1. Training;
      2. Counseling and consultation services to:
         a. Professionals;
         b. Families; or
         c. Providers working with individuals with a brain injury; and
   (b) Shall be provided by a behavioral specialist who shall be:
      1. A psychologist;
      2. A psychologist with autonomous functioning;
      3. A licensed psychological associate; and
   (5) Residential setting that shall:
      (a) Include such services as:
         1. Physical therapy;
         2. Occupational therapy;
         3. Speech therapy;
         4. Cognitive and behavioral therapy; or
         5. Neuropsychological consultation and medical management; and
   (b) Be provided by a:
      a) Licensed facility or certified Medicaid provider who shall:
         1. Have[Which has] access to:
            a. Neuropsychologist [and]
            b. Nurse and physician for medical management; and
   c. Direct care staff member who shall:
   (i) Be [2]. Have adequate direct care staff provided by an individual who:
      a. Be at least 21 years of age or older;
   (ii) Have [At least] the completion of a high school diploma or GED; and
   (iii) Shall submit to a criminal background check and have a valid driver’s license;
   (iv) Have a minimum of one (1) year of experience in providing a service to an individual with a disability; and
   (v) Complete a certified brain injury training program approved by the department prior to service provision.
2. Prior to an employee’s date of hire, obtain results of:
   a. A criminal record check from the Administrative Office of the Courts or the equivalent out-of-state agency, if the individual resided or worked outside Kentucky during the year prior to employment;
   b. A nurse aide abuse registry check as described in 905 KAR 1:100; and
   c. Within thirty (30) days of the date of hire, a central registry check as described in 922 KAR 1:470;
3. Annually, for twenty-five (25) percent of employees randomly selected, obtain:
   a. The results of a criminal record check from the Kentucky Administrative Office of the Courts; or
   b. The equivalent out-of-state agency, if the individual resided or worked outside Kentucky during the year;
4. Evaluate and document the performance of each employee upon completion of the agency’s designated probationary period, and at a minimum, annually thereafter;
5. Conduct and document periodic and regularly scheduled supervisory visits of all professional and nonprofessional direct service staff at the service site in order to ensure that high quality services are provided to the recipient;
6. Not permit an employee to transport a recipient. If the employee has a conviction of driving under the influence (DUI) during the past year;
7. Not employ an individual to perform direct care or a supervisory function, if the individual:
   a. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;
   b. Has a conviction of abuse or sale of illegal drugs during the past five (5) years;
   c. Has a conviction of abuse, neglect, or exploitation;
   d. Has a conviction of abuse, neglect, or exploitation;
   e. Is listed on the nurse aide abuse registry, and approved by the department;
6. The Individuals providing services specified in subsection (2)(b), (3)(g), (4)(b), and (5)(b)1 and 2 of this section shall document a monthly detailed staff note which shall:
   (a) Include:
      1. Date of the service;
      2. The beginning and ending time;
      3. The signature, date of signature, and title of the individual providing the service;
   4. Information regarding the recipient’s health, safety, and welfare;
5. Services provided and progress toward outcomes identified in the approved plan of care, and
6. Additional information requested by the department such as daily notes; and
(b) Be provided to the department with a report on the recipient’s progress:
   1. By the tenth of each month following admission; and
   2. By the tenth of the month following the month of discharge.
7. Wrap around services which shall:
   (a) Be facilitated by targeted case management; and
   (b) Include:
      1. A service such as:
         a. Personal care;
         b. Companion care;
         c. Transportation or
         d. Environmental modification; or
      2. Durable medical equipment.
8. The following services shall not be covered:
   (a) Institutionalization;
   (b) Hospitalization; and
   (c) Medications not otherwise attainable through other resources.

Section 6. Provider Participation. A participating provider shall:
(1) Have a contractual agreement with the Commonwealth of Kentucky;
(2) Have policy and procedures including prohibition of
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physical and chemical resources reviewed and approved by the department;

(3) Be responsible for incident reporting requirements established in Section 9 of this administrative regulation;

(4) Be responsible for the involuntary termination requirements of Section 11(3) of this administrative regulation; and

(5) Submit an invoice for payment to the department due on day fifteen (15) following month of service;

Section 7. Incident Reporting Process. (1) An incident report:
(a) Shall be documented on a DAIL-BI-030, Incident Report;
(b) Shall be submitted by the provider to the individuals or departments indicated and by the timeframes specified in subsection (2)(a)3 and 4, (b)4a and b, and (c)4a through c of this section.
(2) There shall be three (3) classes of incidents as follows:
(a) A Class I incident which shall:
1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider;
3. Be reported to a case manager within twenty-four (24) hours;
4. Be reported to the recipient’s guardian or legal representative directed by the guardian or legal representative; and
5. Be retained on file at the provider and case management agency;
(b) A Class II incident which shall:
1. a. Be serious in nature;
   b. Include a medication error; or
   c. Involve the use of a physical or chemical restraint;
2. Require an investigation which shall be initiated by the provider within four (4) hours of discovery and shall involve the case manager; and
3. Require a complete written report of the incident investigation submitted to the department within forty eight (48) hours of discovery; and
4. Be reported to the following within four (4) hours of discovery:
   a. The recipient’s guardian or legal representative; and
   b. The department:
      i. Via email, facsimile transmission, or the department’s business phone if the incident occurs Monday through Friday by 1:30 p.m.; or
      ii. Via email, or cellular number provided by the department if the incident occurs Monday through Friday after 1:30 p.m. or on a holiday or weekend;
(c) A Class III incident which shall:
1. a. Be grave in nature;
   b. Involve suspected abuse, neglect, or exploitation;
   c. Involve a medication error which requires a medical intervention; or
   d. Be a death;
2. Be immediately investigated by the provider, and the investigation shall involve the case manager; and
3. Require a complete written report of the incident investigation submitted to the department within forty eight (48) hours of discovery; and
4. Be reported to the:
   a. Department for Community Based Services, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;
   b. Recipient’s guardian or legal representative within four (4) hours of discovery; and
   c. Department within four (4) hours of discovery:
      i. Via email, facsimile transmission, or the department’s business phone if the incident occurs Monday through Friday by 1:30 p.m.; or
      ii. Via email, or cellular number provided by the department if the incident occurs Monday through Friday after 1:30 p.m. or on a holiday or weekend.
(3) In addition to the report specified in subsection (2)(c)3 of this section, the following documentation that was in existence at the time of a death shall be submitted to the department:
(a) A current plan of care;
(b) A current list of prescribed medications including PRN medications;
(c) A current crisis plan;
(d) The provider’s medication administration review for the current and previous month;
(e) Staff notes from the current and previous month including details of physician and emergency room visits;
(f) Additional information requested by the department;
(g) A coronor’s report; and
(h) If performed, an autopsy report.

Section 8. Waiting List for Residential Services. The department shall establish and maintain a waiting list for residential services. The waiting list shall be implemented as follows:
(1) In order to be placed on the waiting list, the individual shall submit to the department the documentation specified in Sections 2(4) and 3(2) of this administrative regulation.
(2) The order of placement on the waiting list shall be determined chronologically by date of receipt of the completed application packet specified in Section 3(2) of this administrative regulation.
(3) In determining chronological status, the original date of receipt of the completed application packet shall:
(a) Be Maintained; and
(b) Not be changed.
(4) A written notification of the date and placement on the waiting list shall be mailed to the applicant or the applicant’s guardian or legal representative.
(5) Maintenance of the waiting list shall occur as follows:
(a) The department shall update the waiting list monthly; and
(b) If an individual is removed from the waiting list, written notification shall be mailed by the department to the individual or the individual’s guardian or legal representative.
(6) An individual shall be removed from the waiting list if:
(a) The department is unable to locate the individual or the individual’s guardian or legal representative;
(b) The individual is deceased; or
(c) The individual or individual’s guardian or legal representative refuses the offer of placement for services or does not request to be maintained on the waiting list.
(9) The removal of an Individual from the waiting list shall not prevent the submittal of a new application at a later date.
(10) Funding available shall be allocated to an individual having emergency status prior to allocating funding to individuals having nonemergency status.

Section 9. Termination of Services. (1) A recipient may have services terminated if:
(a) The recipient no longer actively participates in the services within a plan of care; and
(b) Services can no longer be safely provided to the recipient; or
(c) The recipient is no longer meets the eligibility requirements of Section 2 of this administrative regulation.
(2) If a recipient has services terminated, the provider shall implement a discharge plan in accordance with the requirements of subsection (4) of this section.
(3) Voluntary termination and loss of behavioral services shall be initiated if a recipient or the recipient’s guardian or legal representative submits a written notice of intent to discontinue services to the provider and to the department.
(4) Involuntary termination of a recipient by a provider shall require:
(a) Simultaneous notice to the department, the recipient, the recipient’s guardian or legal representative, and the case manager at least sixty (60) days prior to the effective date of the action, which shall include:
   1. A statement of the intended action;
   2. The basis for the intended action;
   3. The authority by which the action is taken; and
   4. The recipient’s right to appeal the intended action through the provider’s appeal or grievance process;
(b) The targeted case manager in conjunction with the recipient and provider to:
   1. Provide assistance to ensure a safe and effective service transition; and
2. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured; and
(c) The targeted case manager to gather necessary documentation for transition.

Section 10. Appeal Procedures for Denial of a Request for Services. (1) An applicant who wishes to appeal a denial of services shall notify the department in writing, within thirty (30) days of receipt of notification of the denial. 

(2) The department shall:
(a) Acknowledge receipt of a written appeal, in writing, within five (5) working days after receipt of the appeal;
(b) Direct the appeal request to the Division of Administrative Hearings Branch, Office of Communications Review to conduct a hearing pursuant to KRS Chapter 13B; and
(c) Render a final decision in accordance with KRS 138.120 by the Secretary of the Cabinet for Health and Family Services.

2. The final order shall make clear reference to the availability of judicial review pursuant to KRS 138.140 and 138.150.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DAIL-BI-010, Application for Behavioral Services", edition 3/09;
(b) "DAIL-BI-020, Physician's Recommendation", edition 3/09; and
(c) "DAIL-BI-030, Incident Report", edition 3/09; and
(d) "DAIL-BI-040, Plan of Care", edition 3/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 910 KAR 3.020

DEBORAH S. ANDERSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: February 12, 2009
FILED WITH LRC: February 12, 2009 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides targeted case management, residential, crisis intervention, wrap around, and training and consultation services to benefit individuals with a brain injury.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to be in compliance with HB 157, approved in 2004, that requires the cabinet to promulgate a regulation as funding is available from the fifty (50) percent allotted of sixteen (16) percent collected in violation fees pursuant to KRS 189A.010(a)(a), (b), (c), or (d).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides direct services to individuals with brain injuries including long-term supportive services and training and consultation to professionals working with individuals with brain injuries in accordance with KRS 189A.050(3)(d).
(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 serving as many individuals with brain injuries as possible with services provided in KRS 189A.050(3)(d) and fees collected pursuant to KRS 189A.050(1).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment allows regulation redefines residential as a placement for an applicant or recipient who was unable to be managed or treated through crisis stabilization in the community, adds the requirements for criminal record checks before a provider employs an individual; clarifies that a provider's monthly staff note include services provided, and requires that a provider have policies and procedures that prohibit the use of physical and chemical restraints.
(b) The necessity of the amendment to this administrative regulation: The public will have a better understanding and expectation of the provisions for behavioral services provided to individuals with brain injuries.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 189A.050(3)(d) by clarifying the requirements that are necessary for the provision of services to individuals with brain injuries.
(d) How the amendment will assist in the effective administration of the statutes: Assistance in the effective administration of the statutes will be through clarification of the requirements for behavioral services provided to individuals with brain injuries.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,000 Kentucky individuals with brain injuries. The Department for Aging and Independent Living, Department for Medicaid Services; Department for Mental Health, Developmental Disabilities and Addiction Services; Eastern State Hospital; Central State Hospital; and Community residential providers.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any provider providing behavioral services shall:
(b) Prior to an employee's date of hire, obtain a criminal record check from the Administrative Office of the Courts or the equivalent out-state agency if the Individual worked or resided outside of Kentucky a year prior to employment, and a Nurse Aide Abuse Registry check;
(c) Annually randomly select 25% of employees and obtain criminal record checks to verify the Kentucky Administrative Office of the Courts or the equivalent out-of-state as specified above;
(d) Evaluate and document performance of each employee upon completion of a probationary period and at a minimum annually thereafter;
(e) Conduct and document periodic and regularly scheduled supervisory visits of professional and para-professional direct service staff at the service site;
(f) Not permit an employee to transport a recipient, if the employee has a conviction of a DUI during the past year;
(g) Not employ an individual to perform direct care or supervisory function, if the individual: 1. Has a prior conviction of an offense in KRS 17.155(1) through (3) or prior felony conviction; 2. Has a conviction of abuse or sale of illegal drugs during the past 5 years; 3. Has a conviction of abuse, neglect or exploitation. Has a CHFS finding of child abuse or neglect pursuant to a Central Registry Check or the Nurse Aide Abuse Registry check;
(g) Include services provided in monthly staff notes; and
(h) Have policy and procedures that include prohibition of physical and chemical restraints.
(5) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Depending on the source used, there may be a cost for a criminal records check.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide individuals with a brain injury who are currently in an emergency crisis with much needed services. Currently, there is no available assistance to appropriately intervene nor do they have services available to them to ensure safe transition back to their original environment. Further this administrative regulation will provide professional personnel that are trained and experienced in the field of brain injury.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: FY 09 approximately $1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).
(b) On a continuing basis: Approximately $1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Repea
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Revenue collected pursuant to KRS 189A.050(3)(d).

7. Provide an assessment of whether an 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 established in this administrative regulation. No increase in funding 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 fees.

9. TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living, Department for Medicaid Services; and the Department for Mental Health, Developmental Disabilities and Addiction Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.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 year? This administrative regulation will not generate any revenue. Approximately $1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).

(b) How 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. Approximately $1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).

(c) How much will it cost to administer this program for the first year? FY 08 $1,000,000.

(d) How much will it cost to administer this program for subsequent years? $1,000,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:
GENERAL GOVERNMENT CABINET
Kentucky Board of Chiropractic Examiners
(Amendment)

201 KAR 21:095. Licensure and registration of persons performing peer review.

RELATES TO: KRS 312.200(3)
STATUTORY AUTHORITY: KRS 312.019(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to adopt administrative regulations. KRS 312.200(3) provides that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration and registration fee for persons to perform those review services.

Section 1. Definitions. (1) The definition of “peer review” is governed by KRS 312.015(4).
(2) “Accepted standards” means those standards of care, skill and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.
(3) “Appropriate chiropractic treatment” means a determination made of treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.
(4) “Unconscionable fees” means charges or bills for treatment submitted for services performed that are [unnecessary/unreasonably] unreasonable for those services. In determining the reasonableness of cost, factors to be considered would include the usual and customary charges by chiropractors for the same or similar services in the locality where the services were performed.
(5) “Bill for treatment” means all services provided to a patient, regardless of the monetary consideration paid to the chiropractor.
(6) “Patient” means an individual who receives treatment from a chiropractor.
(7) “Properly utilized services” means appropriate treatment, services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

Section 2. Requirements for Licensure and Registration. Persons performing chiropractic peer review shall:
(1) Hold a current active license to practice chiropractic within the Commonwealth of Kentucky; and render the actual review services and documented report;
(2) For the first year that a person seeks to register to perform peer review, he shall have previously successfully completed a course consisting of a minimum of 100 (sixty) (60) hours of utilization review and an independent medical examination from a chiropractic college accredited by the Council on Chiropractic Education; and for each year thereafter that a person seeks to register to perform peer review, he shall have completed six (6) hours of utilization review offered by a chiropractic college accredited by the Council on Chiropractic Education; and
(3) Register annually with the board, by June 1 of each year, by:
(a) Presenting evidence of satisfactory compliance with the requirements set out in this section and of having met the education requirements of KRS 312.175; and
(b) Paying a registration fee of $100 (twenty) (20) dollars.
(4) Personally retain a copy of all records associated with each peer review case for a minimum of seven (7) years; and
(5) Employ minimum standards associated with the practice of chiropractic and comply with the code of ethical conduct set forth in 201 KAR 21:015; and
(6) Provide a report that includes the rationale for the determination in order that the licensee provider is given adequate information to appeal; and
(7) Sign all reports; except when the review is performed under the Kentucky Chiropractic Board of Examiners Peer Review Committee, in which case, the board’s administrator or designee shall sign the determination.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42141, Monday through Friday, 8 a.m. to 4:30 p.m.

KARALEE OLDENKAMP, Executive Director
APPROVED BY AGENCY: February 11, 2009
FILED WITH LRC: February 13, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2009, at 9 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by March 19, 2009, five (5) working days prior to the hearing, of their intent to attend. A written 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 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 31, 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: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8764.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp, D.C., Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation specifies the procedures relating to application for certification, certification renewal, and fees for persons performing chiropractic peer review in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that licensees are placed on notice as to the proper procedures and fees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations to ensure regulation of licensees for peer review certification and to set fees.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which licensees apply for certification and renew their certification.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the manner in which applicants apply for licensure and licensees renew their licenses.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the manner in which applications are made to the Board for new licenses and for renewal.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting forth the procedures and
fees for application and renewal thereby placing the public on notic-

e. How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the manner in which applications are made to the Board and licenses are renewed which will reduce the amount of time the Board's staff spends answering these basic questions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts the approximately 38 licensees registered to perform peer review in the Commonwealth of Kentucky.

(4) Provide an analysis 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 in question will have to take to comply with this administrative regulation or amendment. All licensees are required to complete the education, pay the fees associated with initial licensure and renewal and register annually with the Board as set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question 3?: The registration and annual renewal fee is $100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3?: The licensees wishing to perform peer reviews are put on notice of specific requirements for obtaining and maintaining licenses by incorporating the appropriate educational requirements and referencing the appropriate fees. As a result of compliance, licensees will be allowed to conduct business as a licensed peer review chiropractor in the Commonwealth.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this amended regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation directly increases the registration fee paid by peer reviewers to perform peer reviews to $100.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees who choose to participate in the peer review program in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 312.019(9)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

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

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

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

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

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060
STATUTORY AUTHORITY: KRS 327.040(11), (12), 327.060(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Has complied with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialed agency that uses the appropriate edition of the "Coursework Evaluation Tool" copyrighted by Federation of State Boards of Physical Therapy (FSBPT);

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. A score of not less than a score of thirty (30) on the Test of Spoken English (TSE);

3. Verification that English is the native language of the country of origin;

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050.

(e) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be for not less than 390 hours in a 3 month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education as accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall
submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate’s physical therapy records within fourteen (14) days; and [(e)] successfully completed the examination and HIV/AIDS education requirements as specified in KRS 327.050.

Section 2. TemporaryPermits for Foreign-educated Physical Therapist Applicants. (1) An applicant for credentials by examination or an applicant who has not yet satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(e) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (d) of this administrative regulation; and

(b) Submitted an approved “Supervisory Agreement for Physical Therapists Educated in a Foreign Country”.

(2) The temporary permit shall be revoked if the applicant:

(a) Fails to obtain a passing score on the examination;

(b) Fails to complete the scheduled examination within the initial sixty (60) day eligibility or

(c) has not satisfactorily completed the supervised practice with in a six (6) month period.

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

(a) Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing, 9/2004; and

(b) “Supervisory Agreement for Physical Therapists Educated in a Foreign Country” 10/12/00.

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director
APPROVED BY AGENCY: February 13, 2009
FILED WITH LIRC: February 13, 2009 at 8 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2009 at 9 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notice of intent to attend this hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. All persons who wish to speak 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 31, 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for foreign educated physical therapists.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.050 and 327.040(1), and (11).

(c) How the administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for foreign educated licensing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for foreign educated licensing requirements.

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

(a) How the amendment will change this existing administrative regulation. The amendment clarifies the eligibility for foreign educated licensing approval process.

(b) The necessity of the amendment to this administrative regulation: To clarify the requirements for foreign educated physical therapy candidates.

(c) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a foreign educated physical therapy candidate to become licensed in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 applicants 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: The national examination shall be passed before a temporary permit would be issued to complete the final requirement of a 3 to 6 month supervised practice.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More uniformity and fairness in determining whether a foreign educated applicants demonstrates educational equivalency to a United States educated physical therapists.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by license fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Board of Physical Therapy.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(11), (111) and 327.060

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new cost is anticipated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection

(No Amendment)

302 KAR 18:010. Business Identification number required [Permit for operation of amusement rides or amusement attractions in Kentucky].

RELATES TO: KRS [247.229] 247.234(1), 247.690

STATUTORY AUTHORITY: KRS 247.234

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations (establishing requirements) for the process of application for a business identification number[operation of amusement rides or attractions]. This administrative regulation establishes the criteria for obtaining a business identification number[operation of amusement rides or attractions] in the Commonwealth of Kentucky.

Section 1. Definitions. (1). Business Identification Number means a number identifying the individual or business entity owner of an amusement ride or amusement attraction.

(2) ‘Inspection fee’ means the fee required to be paid prior to operation of any amusement ride or amusement attraction in Kentucky. ‘Inspection fee’ means the fee required to be paid to operate any amusement ride or amusement attraction in Kentucky established pursuant to 302 KAR 16:020.

(3) ‘Operating permit’ means a business identification number identifying the owner of an amusement ride or amusement attraction.

Section 2. A business identification number[an operating permit] shall be required to operate amusement rides or amusement attractions in the state of Kentucky and shall be valid for one (1) year from the date of issuance, and such number may not be transferred or assigned.

Section 3. Procedure for Obtaining a Business Identification Number[an Operating Permit]. (1) Every owner of an amusement ride or amusement attraction seeking to operate in Kentucky shall submit to the commission[the commissioner], an application for a business identification number along with the fee for each amusement ride or amusement attraction[an operating permit] accompanied by the fee required by 302 KAR 16:020.

(a) The owner of the amusement ride or amusement attraction shall provide a written itinerary indicating

1. The location of the first setup;
2. All future operating dates and locations, including addresses;
3. The operating period at each location; and
4. The names of all rides requiring initial safety inspections pursuant to KRS 247.234(2)(d); and
5. All rides or attractions being operated at each location.

(b) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing immediately when cancellations are made or additional locations added.

(c) The itinerary may only be submitted in writing including by facsimile or electronic mail.

(d) Except as provided in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of $500,000 per occurrence for bodily injury or death, for each amusement ride or amusement attraction.

(e) The proof of insurance shall include a statement that the insurer shall not cancel the policy without thirty (30) days written notice to the commissioner.

(f) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include:

1. A listing of all amusement rides and amusement attractions insured;
2. A statement that all amusement rides and amusement attractions operated under the supervision of the insurer are covered in the policy.

(g) If the applicant’s amusement rides or amusement attractions are permanently located or erected, he may, in lieu of providing proof of liability insurance, provide proof of financial responsibility in at least the amount of $500,000 on or before the date of the initial safety inspection. Proof of financial responsibility shall be shown by one (1) of the following methods:

(1) Provide proof of liability insurance of $500,000 per occurrence for bodily injury or death;

(2) A financial statement certified by a licensed certified public accountant, dated no more than thirty (30) days prior to the application date, indicating a net worth of $500,000 or more in assets located in the state;

(h) An irrevocable letter of credit to the department in the amount of $500,000;

(i) Provide other proof of financial responsibility in the amount of $200,000, with accuracy attested to on a form provided by the Department of Agriculture, as provided in Section 5 of this administrative regulation.

(j) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing, within five (5) days, if cancellations or additional locations occur.

(k) Except as provided in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of $500,000 per occurrence of bodily injury or death, for each amusement ride or amusement attraction.

1. The proof of insurance shall include a statement that the insurer shall not cancel the policy without thirty (30) days written notice to the commissioner.

2. A statement that all amusement rides and amusement attractions operated under the supervision of the insurer are covered.

3. A listing of all amusement rides and amusement attractions insured;

4. A statement that all amusement rides and amusement attractions operated under the supervision of the insurer are covered.
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(a) Tender an irrevocable letter of credit to the department in the sum of $600,000; or
(b) Provide other proof of financial responsibility in the amount of $500,000, with accuracy attested to on forms incorporated by reference in Section 5 of this administrative regulation.

Section 4. Upon receipt of a complete[proper] application, applicable fees, proof of liability insurance or financial responsibility, and a complete[the required] itinerary, shall a business identification number[an operating permit shall] be issued in the name of the applicant. If all items required are not physically available at the time of the initial safety inspection to the inspector, the inspector shall not perform the initial safety inspection and a business identification number shall not be issued. The business identification number[permit] shall be available for inspection at all times. If the business identification number[permit] holder is operating in multiple locations, a clear and legible[photocopy of] the business identification number shall be displayed[permit shall be accepted].

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Business Identification Number Application for Rides and Attractions", 02/06;
   (b) "Permit Application for Mobile Rides and Attractions", 03/03;
   (c) "Permit Application for Permanent Fixed Locations", 03/03;
   (d) "Permit Application for Mobile Rides and Attractions", 03/03;
   (e) "Permit Application for Permanent Fixed Locations", 03/03;
   (f) "Permit Application for Mobile Rides and Attractions", 03/03;
   (g) "Certification of Proof of Financial Responsibility", 03/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Regulation and Inspection, 111 West Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 19, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 is made. Written comments are acceptable until March 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation outlines the requirements for obtaining a business identification number for the operation of amusement rides or attractions.
   (b) The necessity of this administrative regulation: This regulation outlines the requirements for obtaining a business identification number for the operation of amusement rides or attractions. A business identification number is required for operation of amusement rides or attractions.
   (c) How this administrative regulation conforms to the content of the enacting statutes: KRS 247.234 establishes the requirements for a business identification number. This regulation details exactly what information inspectors will require for a successful inspection and issuance of a business identification number.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the requirements for obtaining a business identification number for the operation of amusement rides or attractions. This regulation will aid in efficient administration of business identification numbers by outlining everything needed by inspectors, and adding the requirement that these materials be present at the time of inspection.
(2) If 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 defines what is required to obtain a business identification number, and requires this information be available to inspectors at the time of inspection.
   (b) The necessity of the amendment to the administrative regulation: This regulation defines what is required to obtain a business identification number, and requires this information be available to inspectors at the time of inspection. This is necessary to eliminate additional trips for inspections, which wastes valuable inspector time.
   (c) How this amendment conforms to the content of the authorizing statutes: KRS 247.234 establishes the requirements for a business identification number. This amendment incorporates these new requirements.
   (d) How will amendment assist in the effective administration of the statutes: This regulation defines what is required to obtain a business identification number, and requires this information be available to inspectors at the time of inspection. Some businesses did not have this material present at the time of inspection, causing the inspectors to need to return at a later date.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 460 amusement businesses in the Commonwealth.
   (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates additional requirement for the issuance of business identification number to amusement ride businesses, and these requirements are reflected in this regulation. The businesses must follow the requirements set forth.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) and how will that cost be incurred by the businesses?
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (5): The businesses will be safer and maintain records of safety that may be useful to the business.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: No additional costs.
      (b) On a continuing basis: No additional costs.
   (6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.
   (8) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any new fees directly or indirectly.
   (9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234, 247.236, 247.990
STATUTORY AUTHORITY: KRS 247.234, 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2)(b) and (d) require the department to promulgate administrative regulations establishing initial safety inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes the initial safety inspection fees.

Section 1. Definitions. (1) "Air inflatable device" means an object or amusement ride or amusement attraction that is filled with air by an electric motor-driven blower.

(2) "Chair lift or aerial tramway" means an amusement ride or amusement attraction that is operated by a series of cables and pulleys.

(3) "Climbing wall" means a self-belayed climbing attraction.

(4) "Dark ride" means an amusement ride or amusement attraction which is enclosed and has the lights turned off during the duration of the ride, and is not a nonmechanized self-propelled amusement.

(5) "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle which travels the fixed path.

(6) "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky, and established in this administrative regulation.

(7) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(8) "Major ride" means any ride that:
   (a) Has height requirement of forty-three (43) inches or greater to ride; and
   (b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(9) "Operating permit" means a business identification number identifying the owners of an amusement ride or amusement attraction.

(10) "Play port" means an object or amusement ride or amusement attraction designed for use by children on which a child can swing, walk, climb, or slide, and which follows a fixed path.

(11) "Pony ride" means an amusement ride attached to a nonmotorized mechanical wheel and powered by an animal of the equine species.

(12) "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material.

(13) "Walk through" means a fun house, glass house, or laser tag that is nonmechanized and self-propelled.

(14) "Water ride" means an amusement ride or amusement attraction which uses water as a means of propulsion and includes bumper boats and water park slides which are in excess of fifteen (15) feet in height and have the rider(s) above the water level of the slide.

Section 2. (1) All amusement rides and amusement attractions operating in Kentucky shall bear an initial safety inspection seal. Following an initial safety inspection, an initial safety inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(2) If the required initial safety inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of a initial inspection is provided. The operating permit shall not be valid for an amusement ride or amusement attraction which has not passed an initial safety inspection and has the inspection fees paid as set out in Section 2 of this administrative regulation.

(3) All amusement rides and amusement attractions operating in Kentucky shall bear an inspection seal. Following a safety inspection, an inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(4) If the required inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of a valid inspection is provided. Amusement attraction shall not include go-cart rides, air-mounded houses, maze, manual-boloyed climbing walls, and mechanical bulls.

Section 3. Initial safety inspection fees shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as follows:

(1) Air inflatable devices shall be fifty (50) dollars.

(2) Pony rides shall be fifty (50) dollars.

(3) Euro or turbo bungee shall be seventy-five (75) dollars.

(4) Kiddie rides shall be seventy-five (75) dollars.

(5) Play port shall be seventy-five (75) dollars.

(6) Climbing walls shall be seventy-five (75) dollars.

(7) Water rides shall be seventy-five (75) dollars.

(8) Dark rides shall be seventy-five (75) dollars.

(9) Walk throughs and glass houses shall be seventy-five (75) dollars.

(10) Tracked or trackless trains shall be one hundred (100) dollars.

(11) Go-cart facility shall be one hundred twenty-five (125) dollars.

(12) Chair lift or aerial tramway shall be one hundred twenty-five (125) dollars.

(13) Steel roller coaster shall be one hundred twenty-five (125) dollars.

(14) Bungee or jetpack shall be one hundred twenty-five (125) dollars.

(15) Wooden roller coaster shall be one hundred twenty-five (125) dollars.

(16) Any amusement ride or amusement attraction not listed in this section shall be one hundred fifty (150) dollars.

Section 4. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection [can be completed].

Section 5. All amusement rides and amusement attractions shall be maintained in good electrical and mechanical condition.
and shall be under the supervision of an operator at all times during the operation of the amusement ride or amusement attraction.

Section 6. (1) All amusement rides and amusement attractions which are potentially hazardous to spectators shall be fenced to provide protection to bystanders and riders.

(2) A barrier providing a safe distance from the outermost arc shall be present for aerial amusement rides or swings.

Section 7. Property charged fire extinguishers shall be present at all amusement rides and amusement attractions not more than seventy-five (75) feet from any point of a ride. A first aid kit shall be available at the park, fair, event, or ride location.

Section 8. The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, persons who are wearing footwear or clothing that may cause a safety concern, or persons who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 9. (1) All power units shall be shielded to provide for public safety.

(2) An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibits, or other structures.

(3) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction.

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 10. Pre-operation Inspection. (1) The owner or operator shall provide the department's safety inspectors the manufacturer's pre-operational inspection checklist specific to each ride or attraction.

(2) The owner of the ride or attraction shall develop a daily pre-opening checklist which shall contain, at a minimum, all requirements listed in the operator manual, the date and time of the pre-operation inspection, printed name of the person completing the pre-operation inspection, and signature of the person completing the pre-operation inspection.

(3) The owner or operator of an amusement ride or attraction shall perform a pre-opening daily pre-operation inspection using the form required in subsection (2) of this section prior to public use of the ride or attraction.

(4) Upon request, the owner or operator shall immediately provide to the safety inspector a logbook containing all pre-operation daily inspections for the previous twelve (12) months. The logbook shall be kept in close proximity to the ride or attraction.

(5) All rides and attractions shall complete and document a daily pre-opening inspection, including rides or attractions that do not require an operator.

Section 11. Amusement rides and attractions shall be operated according to manufacturer's guidelines.

Section 12. To assure continued safety of amusement rides and amusement attractions, routine inspections may be conducted at undetermined times throughout the year. (4) All power units shall be shielded to provide for public safety.

(5) An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibit, or other structures.

(6) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction.

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 8. Property charged fire extinguishers shall be present at all amusement rides and amusement attractions.

Section 9. The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, who are not wearing footwear protection, such as shoes or secured sandals, or who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 10. To assure continued safety of amusement rides and amusement attractions, periodic safety inspections may be conducted at various times throughout the term of the permit.

RICHE FARMER, Commissioner
APPROVED BY AGENCY: February 8, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard shall 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the requirements for operation and inspections of amusement rides and attractions.

(b) The necessity of this administrative regulation: This regulation outlines the requirements for operation and inspections of amusement rides and attractions. This regulation is necessary for the safe operation and safety inspections of amusement rides and attractions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.234, 247.2435, and 247.236 create new operation and safety inspection requirements. This regulation conforms to statutory requirements by incorporating the new requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by clearly outlining the safety requirements for operators.

(2) If 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 outlines the requirements for operation and inspections of amusement rides and attractions and mandates by the statutes, and changes the order of the administrative regulations to match the order of the statutes.

(b) The necessity of the amendment to the administrative regulation: This regulation is necessary for the safe operation and safety inspections of amusement rides and attractions by adding the
additional statutory requirements.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 247.234, 247.240, 247.236, and 247.236 create new operation and safety inspection requirements. This regulation conforms to statutory requirements by incorporating the new requirements.

(d) How will amendment will assist in the effective administration of the statutes: This regulation outlines the operational requirements for safe operation of amusement rides and attractions.

(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 450 amusement businesses in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates additional requirements for inspection and operation of amusement ride businesses, and these requirements are reflected in this regulation. The businesses must follow the requirements set forth.

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

(c) As a result of compliance, what benefits will accrue to the entity identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection (Amendment)

302 KAR 16:030. Determination of administrative or safety violations which cannot be corrected immediately: Section 1803.

RELATES TO: KRS 247.232, 247.234, 247.236, 247.236,[247.239]

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for [safety] inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine [safety] violations which cannot be immediately corrected [immediately].

Section 1. Definition. "Immediately correctable violation" means a violation which can be corrected at the time of the initial inspection.

Section 2. The department's department safety inspector shall determine the nature and severity of [safety] violations and shall determine when the violations are not immediately correctable based on the manufacturer's standards, KRS 247.232 through 247.236, and 302 KAR 16.010 through 302 KAR 16.14(0.14.07).

Section 3. A violation issued for operation of an amusement ride or amusement attraction without a valid business identification number/permit shall be considered a violation which is not immediately correctable.

Section 4. A safety inspector may order closed a unit or portion of a ride which fails to comply with safety or operational guidelines, where closure of such does not affect the remaining portion of the ride, by setting upon that unit or portion of the ride a section stop order. The owner shall notify the department when the unit or portion of the ride has been repaired to obtain information for section stop order removal.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Anyone 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 hear the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2000. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 800 Mercy Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney
VOLUME 35, NUMBER 9 – MARCH 1, 2009

1. Provide a brief summary of:
   a. What this administrative regulation does: This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.
   b. The necessity of this administrative regulation: This administrative regulation establishes procedures to determine violations which cannot be immediately corrected. This regulation allows inspectors to order closed a portion of a ride or attraction so long as closure of that section does not affect the safe operation of the ride or attraction. The necessity comes from the economic impact to operators that have a ride or attraction that would be required to be completely closed, when only a section closed would allow safe operation.
   c. How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to determine violations which cannot be immediately corrected. This regulation allows inspectors to order closed a portion of a ride or attraction so long as closure of that section does not affect the safe operation of the ride or attraction. By allowing a section of a ride to be closed, the need to issue stop orders will be reduced.
   e. How the amendment will change the existing administrative regulation: This regulation allows inspectors to order closed a portion of a ride or attraction so long as closure of that section does not affect the safe operation of the ride or attraction.
   f. The necessity of the amendment to the administrative regulation: The need to order a portion of the ride or attraction closed will allow otherwise safe rides and attractions to operate while minor repairs are made.
   g. How this amendment conforms to the content of the authorizing statutes: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.
   h. How will this amendment assist in the effective administration of the statutes: This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.

2. List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 460 amusement businesses in the Commonwealth.

3. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   a. List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates additional requirement stop operation order to close single ride sections. The business may operate a ride with a close section so long as all other safety procedures are met.
   b. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.
   c. As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.

4. Provide an estimate of how much it will cost to implement this administrative regulation:
   a. Initially: No additional costs.
   b. On a continuing basis: No additional costs.

5. What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

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 will be no increase in fees with this regulation.

7. State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any new fees directly or indirectly.

8. TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 16:040. Correction of safety violations and right to reinspection.

RELATES TO: KRS 247.232, 247.234, 247.236(247.090)
STATUTORY AUTHORITY: KRS 247.234, 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for safety inspections for amusement rides or attractions. This administrative regulation establishes procedures for the correction of safety violations by amusement rides or attractions.

Section 1. If a department safety inspector finds an amusement ride or [amusement] attraction does not comply with KRS 247.232 to 247.236, 302 KAR 16:010 through 302 KAR 16:142(270), or manufacturer standard [manufacturer's standards], he shall issue a stop operation order prohibiting the operation of the amusement ride or [amusement] attraction, or any part thereof, found to be in violation. The stop operation order shall be removed from the amusement ride, amusement attraction, or structure only when the violation has been corrected and then only by a department safety inspector. A stop operation order shall not be issued for any violation found to be correctable as defined in 302 KAR 16:030.
Section 2. If, upon [an initial] reinspection of an amusement ride or [amusement] attraction under a stop operation order, the safety violation has been corrected within twenty-four (24) hours, the owner may not be charged a reinspection fee as authorized by KRS 247.234.

Section 3. If a safety inspector determines [in the opinion of the department's Inspector] an amusement ride or [amusement] attraction present an imminent danger, he shall issue and attach a stop operation order against the use of the amusement ride or attraction [device or structure]. The order shall not be removed until the device is made safe, and then only by a safety inspector of the department or its designee, and in the meantime the device shall not be used.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency by writing to March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Meri Street, 7th Floor, Frankfort, Kentucky, 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures for the correction of safety violations of amusement rides or attractions.

(b) The necessity of this administrative regulation: This administrative regulation establishes procedures for the correction of safety violations of amusement rides or attractions. This regulation gives inspectors the authority to order a ride or attraction closed. The authority to stop the operation of a ride is necessary to assure compliance with the statutes and regulations after the initial inspection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for the correction of safety violations of amusement rides or attractions. This regulation gives inspectors the authority to order a ride or attraction closed. The authority to stop the operation of a ride is necessary to assure compliance with the statutes and regulations after the initial inspection.

(2) If 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 is renumbered to match the new order of the regulations.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation establishes procedures for the correction of safety violations of amusement rides or attractions.

This amendment will correct the regulatory numbering system, and make administration of these regulations easier for Inspectors.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.

(d) How will this amendment assist in the effective administration of the statutes: This amendment will correct the regulatory numbering system, and make administration of these regulations easier for Inspectors.

(3) List the type and number of Individuals, businesses, organizations, state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 400 amusement businesses in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The businesses will need to correct safety violations prior to opening the ride or attraction.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.

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

(9) TIERING: Is tiering applied: No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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?
GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection (Amendment)

302 KAR 16:070. Reports of Injuries Involving Amusement Rides and Amusement Attractions.

RELATES TO: KRS 247.233[247.234; 247.234, 247.236; 247.236, 247.238];
STATUTORY AUTHORITY: KRS 247.233[247.234] requires the department to conduct mandatory investigations of amusement rides and amusement attractions and to conduct subsequent inspections at any time to determine if a particular amusement ride or amusement attraction complies with accepted standards of safety. It is necessary for the department to receive reports of amusement ride or amusement attraction accidents causing death or injury in a timely manner to ensure that a particular amusement ride or attraction complies with accepted standards of safety and to adequately inform the public of the presence of a safety violation.

Section 1. Amusement ride or attraction owners who are required to file a written incident report shall immediately call the department to report relevant information. The required notice to the department shall be furnished through the written accident report within twelve (12) hours of notice of the incident.

Section 2. Incident Reports. A written report shall be filed by the owner of an amusement ride or amusement attraction if any of the following occurs as a result of an accident or incident involving an amusement ride or amusement attraction or equipment:
(1) The death of a person;
(2) An injury requiring medical treatment other than first aid;
(3) Damage to amusement ride or attraction that affects the future safe operation of the ride or attraction;
(4) Any sudden, unplanned, nonaccidental stoppage of the ride or;
(5) Structural or major mechanical failure of an amusement ride or amusement attraction.

Section 3. Where to Report. (1) If any event specified in Section 2 of this administrative regulation occurs, the owner must immediately report the accident or incident to the Department of Agriculture, Division of Regulation and Inspection at (502) 573-0282.
(2) When a written report is required, the report shall be submitted within twelve (12) hours to the Department of Agriculture, Division of Regulation and Inspection, 111 Corporate Drive, Frankfort, Kentucky 40601 or may be submitted via the department’s Web site. The written report shall contain the following information:
(a) The date and time of the incident or accident;
(b) The date and time the report was completed;
(c) The location of the incident or accident;
(d) A description of the incident or accident;
(e) The name, address, phone number, and business identification number of the owner or company for the amusement ride or amusement attraction;
(f) The name and address of the operator(s) of the amusement ride or amusement attraction;
(g) The name, serial number, and manufacturer of the amusement ride or amusement attraction if known;
(h) The name, address, phone number, gender and age of the injured person, if any:
(i) The nature and extent of the injury;
(j) The name and location of the treating facility or person.

(4) The address, telephone number, and printed and signed name of the person completing the report.

Section 4. Incident Investigation. (1) The department shall initiate an incident investigation within twelve (12) hours of the initial notification of an event requiring an incident report.
(2) Pending the completion of an incident investigation, the amusement ride or amusement attraction shall not be operated, moved, cleaned, repaired, or replaced without written approval of the department other than as necessary for life or safety. A "serious injury" means an injury which requires treatment by a licensed physician.

Section 2. Accident Reports. A written report shall be filed by the owner of an amusement ride or amusement attraction if any of the following occurs as a result of an accident or incident involving an amusement ride or amusement attraction, equipment, or operating site:
(1) The death of a person;
(2) An injury requiring medical treatment;
(3) An injury to a person not receiving medical treatment;
(4) The involvement of a person requiring the intervention of emergency response emergency personnel;
(5) Damage to property;
(6) Structural or major mechanical failure of an amusement ride or amusement attraction.

Section 3. Reports of a Death or Serious Injury. (1) If a death or serious injury results from the operation of an amusement ride or amusement attraction, the owner of the amusement ride or amusement attraction shall, upon being notified, immediately report the death or serious injury to the Department of Agriculture, Division of Regulation and Inspection at (502) 573-0282.
(2) If a death or serious injury results from an amusement ride or amusement attraction accident, a written report shall be submitted within twenty-four (24) hours, to the Department of Agriculture, Division of Regulation and Inspection, 111 Corporate Drive, Frankfort, Kentucky 40601. The written report shall contain the following information:
(a) The name and address of the owner of the amusement ride or amusement attraction;
(b) The name and address of the operator of the amusement ride or amusement attraction;
(c) The name and address of the manufacturer of the amusement ride or amusement attraction;
(d) The location of the accident;
(e) The date and time of the accident;
(f) The name, serial number, and manufacturer of the amusement ride or amusement attraction;
(g) If an accident report was submitted by telephone, the time and name of the person informed of the accident;
(h) The name and addresses of all persons killed or injured;
(i) The nature and extent of the injuries;
(j) A description of the accident;
(k) The identity of persons or agencies providing medical or emergency treatment; and
(l) A duplicate copy of the accident or incident report submitted to the liability insurance carrier or investigative authority.

Section 4. Safety Investigation. (1) If any event specified in Section 2 of this administrative regulation occurs, the owner shall immediately report the event by telephoning the Department of Agriculture, Division of Regulation and Inspection at (502) 573-0282.
(2) When a written report is required, the report shall be submitted within twenty-four (24) hours of the initial notification of a death or serious injury resulting from the operation of an amusement ride or amusement attraction.
(3) Pending the completion of a safety investigation, the amusement ride or amusement attraction shall not be operated, moved, cleaned, repaired, or replaced without written approval of the department.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Maro Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the content of and when and where a written incident or incident report is to be submitted and when a mandatory incident investigation will occur.

(b) The necessity of this administrative regulation: This administrative regulation establishes the content of and when and where the reports are to be submitted and when the mandatory incident investigation will occur.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.233 requires amusement ride and attraction owners to submit a written report following an accident or specified incident and requires the department to conduct mandatory investigations of amusement ride and attraction accidents and incidents. This administrative regulation establishes the content of and when and where the reports are to be submitted and when the mandatory incident investigation will occur.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the content of and when and where the reports are to be submitted and when the mandatory incident investigation will occur.

(2) If 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 adds requirements to Incident reports, and modifies when reports are required.

(b) The necessity of the amendment to the administrative regulation: This administrative regulation establishes the requirements for an incident report. The required information is critical for a timely and thorough investigation.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 247.233 requires amusement ride and attraction owners to submit a written report following an accident or specified incident and requires the department to conduct mandatory investigations of amusement ride and attraction accidents and incidents. This administrative regulation establishes the content of and when and where the reports are to be submitted and when the mandatory incident investigation will occur.

(d) How this amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for an incident report. The required information is critical for a timely and thorough investigation.

(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 460 amusement businesses in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates additional requirements for the reporting of injuries.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business and injured patrons.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(5) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 16:080. Qualifications and inspection criteria for bungee [bungee] jumping or similar apparatus permit.

RELATES TO: KRS 247.232, 247.234
NECESSITY, FUNCTION, AND CONFORMITY: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky: designated bungee [("bungey")2] or similar apparatus.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "Air bag" means a device which cushions the body and which uses an air release breather system to dissipate the energy due to a fall, thereby allowing the person to land without an abrupt stop.

(2) "Bungee ["bungey"] cord" means the elastic rope to which the jumper is attached.

(3) "Bungee ["bungey"] jumping" means a person falling from a height, including either a permanent or mobile jumping facility, where the descent is limited by attachment to the bungee ["bungey"] cord.

(4) "Bungee ["bungey"] jump site" means the area designated for the bungee ["bungey"] jump operation by the owner or operator and approved by the Kentucky Department of Agriculture.

(5) "Carabineer" means a shaped metal device with a gate used to connect sections of the bungee ["bungey"] cord, jump rigging, equipment or safety gear. Carabineers used for life supporting systems must be of the locking design.

(6) "Catapulting, launching, negative or reverse jumping" means the practice of stretching the bungee ["bungey"] cord while attached to the jumper who is held on the ground then released and propelled into the air.

(7) "Dynamic loading" means the load placed on the bungee ["bungey"] cord, rigging, harness, etc. by the weight of the jumper plus the G forces involved.

(8) "G force" means the unit of force equal to the gravity exerted on a body at rest.

(9) "Harness" means an assembly to be worn by a jumper and to be attached to a bungee ["bungey"] cord designed to prevent the wearer from becoming detached from the bungee ["bungey"] system.

(10) "Lift" means a device or similar equipment utilized to transport customers, general public or employees to work area or jump launch area.

(11) "Military specification (Mil-Spec) cord" means preloaded or prestretched rubber cords originally developed for military use. These cords are made in conformance with military specifications and are often referred to as "Mil-Spec." These cords are usually cotton or nylon sheathed. There are some nonmilitary sheathed cords in use that may meet the specifications. This type of cord is usually made of three (3) to five (5) sheathed cords contained in one (1) outer sheathing.

(12) "New Zealand cord" means all rubber cords made of synthetic or natural rubber using continuous loops or strands. These types were developed in New Zealand. These type cords do not usually utilize any sheathing, and are configured as one (1) large cord made of several hundred small rubber strands.

(13) "Platform" means the launch area where jumpers will be assembled and depart from.

(14) "Safe working load (SWL)" means the maximum rated load which can be safely handled by equipment or a component of the rigging under specified conditions, expressed in pounds.

(15) "Safety factor" means the ratio obtained by dividing the breaking load of any piece of equipment by its working load.

(16) "Safety harness (safety belt)" means an assembly worn by a jump master, etc. designed to be attached to a safety line to stop the wearer from falling.

(17) "Safety line" means a line used to connect the safety harness or belt to an anchorage point or rail in situations where there is a risk of a fall.

(18) "Sandbagging" means the practice of a jumper holding onto any object (including another person) while jumping, for the purpose of exerting more force on the bungee ["bungey"] cord in order to stretch it further, and then releasing the object at the bottom of the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone.

(19) "Stunt jumping" means the combining of any other activity with bungee ["bungey"] jumping with disregard for safety clearances as outlined in this criteria.

(20) "Tandem, multiple, or double jumping" means the practice of two (2) or more harnessed together while jumping simultaneously from the same platform.

(21) "Ultimate tensile strength" means the point when the applied load reaches a maximum prior to failure, expressed in pounds.

Section 2. Applicability and Inspection Criteria. (1) Applicability.

(a) This administrative regulation shall apply to bungee ["bungey"] jumping sites and operations open to the general public.

(b) This administrative regulation shall not apply to bungee ["bungey"] jumping sites and operations the department determines are for demonstration or exhibition purposes only and which are not open to the general public.

(2) Inspection criteria. This administrative regulation provides inspection criteria for:

(a) Site and site approval;
(b) Design;
(c) Equipment testing;
(d) Management operation;
(e) Operation procedures;
(f) Emergency provisions; and
(g) Emergency procedures.

Section 3. Operating Approval. (1) The owner or operator of a bungee ["bungey"] jumping site or facility shall be issued a permit from the Kentucky Department of Agriculture pursuant to KRS 247.234 and 302 KAR 16.060 prior to operation in the state of Kentucky.

(2) The owner or operator of a bungee ["bungey"] jumping site or facility shall comply with all relevant statutes and administrative regulations throughout the permit period.

(3) The following business identification number (permit) periods and inspection fees shall be applied to all bungee ["bungey"] jumping sites or facilities operating in the Commonwealth of Kentucky.

(a) For permanent and mobile installations the business identification number (permit) of operation shall be renewed annually.

(b) For mobile operations an inspection fee will be charged at each "set-up".

(4) Site plan and equipment design and construction.

(a) A report shall be submitted to the Department of construction or "set-up" which shall contain site plans, safety zones, drawings, specifications and certification of equipment and structures, and operating manuals.

(b) The department may require a registered engineer's report that the design and construction of the structures, equipment, access ways, operating areas, and intended method of operations meet applicable engineering standards and local codes.

(c) The owner or operator of a bungee ["bungey"] jumping site or facility shall provide a certificate of insurance to the department that an insurance policy exists covering any spectator or patron in the amount required by law.

Section 4. Permanent Platform. All bungee ["bungey"] jumping sites or facilities shall be equipped with a platform which meets the following criteria:

(1) The safety working load (SWL) shall be determined by the maximum weight on the platform at any one (1) time, with a safety factor of not less than five (5), to include any dynamic loads from the jumping operation.

(2) Where the platform is not an integral part of the structure to which they are attached, shall have a safety factor of at least five (5) over the total design load, to include any dynamic loads from the jumping operation.

(3) Where the platform is not an integral part of the structure, these platforms will have a back-up safety at all times with a safety factor of at least five (5).

(4) On either type of platform, a balance load must be maintained during all operations.

(5) The platform shall have a slip-resistant floor surface. The platform shall be constructed of an open mesh type steel to insure jumpers, not in the control of the platforms, to escape to safety if the platform operation fails.
(7) The platform shall be constructed to have sufficient working space, for the intended number of persons, as specified in the site manual.

(8) There shall be a self-closing gate with an automatic positive lock system across the jump point when a jumper is not present at the jump point.

(9) Access and platform walkways, stairways, ladders, handrails, etc., shall meet minimum OSHA standards and Kentucky Building Code when and where applicable.

(10) All shackles shall be safety-wired.

(11) The system for recovering the jumper shall be operated by either the jump operator or jump master.

(12) There shall be an alternative method of jumper recovery should the main recovery system fail to recover the jumper.

(13) In a human powered retrieval system or in a friction lowering system, an eleven (11) mm or larger rock climbing rope shall be used.

(14) In a human powered retrieval system where a jumper is pulled back up to the jump platform, a locking mechanism (for example, and ascender or jumper) shall be used to stop and hold the jumper in one (1) place once the applied force on the retrieval rope is removed.

(15) In a friction lowering system there shall be a "dead man switch" or locking mechanism that will stop the lowering action of the system should a situation arise where the person in charge of lowering the jumper becomes unconscious or unable to perform the lowering duties safely.

(16) All bungee [bungey] cords shall be attached to the anchor point at all times the cord is in the connection area.

Section 5. Bungee [Bungey] Cord(s). All bungee [bungey] cords used at bungee [bungey] jumping sites or facilities shall meet the following criteria:

(1) The minimum factor of safety (FS) for any configuration bungee [bungey] cord shall be not less than five (5). The maximum dynamic load that a jumper can apply to a bungee [bungey] cord shall be no greater than one-fifth (1/5) or twenty (20) percent of that cord's minimum breaking strength. Minimum breaking strength shall be no less than that recommended by the manufacturer.

(2) The maximum G force allowable to a jumper using waist and chest harness is four and five-tenths (4.5) Gs. The maximum G force allowable to a jumper using an ankle harness is three and five-tenths (3.5) Gs.

(3) In a multiple cord design (Mil-Spec) the cords shall be entirely enclosed in a protective sheath.

(4) In a single cord system the binding shall hold the cord threads in the designed positions. The binding shall have the same characteristics as the cords themselves.

(5) All bungee [bungey] cord design, manufacturing, and testing shall meet the following specifications:

(a) All bungee [bungey] cord manufacturers shall perform conclusive ultimate tensile strength testing on a representative amount of all manufactured bungee [bungey] cords with stress to failure of the bungee [bungey] samples. The bungee [bungey] cord sample must have been constructed using the manufacturer's standard methods which shall include bungee [bungey] cord and connections. All tests shall be performed or supervised by an independent testing laboratory or a certified engineer. Test results shall be readily available upon request. The ultimate tensile strength is reached when the applied load reaches a maximum before failure.

(b) A load versus elongation curve, resulting from the aforementioned test shall be used to calculate the maximum cord force exerted by the cord on a jumper within the proper weight range. Documentation of these calculations shall be readily available upon request.

(c) All bungee [bungey] cord manufacturers shall provide specifications on maximum allowable usage of bungee [bungey] cords expressed in number of jumps.

(d) All bungee [bungey] cord manufacturers shall provide specifications on maximum allowable usage of bungee [bungey] cords expressed in number of jumps.

Section 6. Jumper Harness and Hardware. All bungee [bungey] jumping harnesses and hardware shall meet the following criteria:

(1) All harness, webbing, bindings, ropes, and hardware shall meet or exceed the standards as set by the National Fire Prevention Association (NFPA) 1983 Standard on Fire Service Line Safety Rope, Harness, and Hardware (1990 Edition).

(2) A jumper harness shall be either a full body harness, a seat harness with shoulder straps, or an ankle harness. Harnesses shall be specifically designed and manufactured for mountain climbing or bungee [bungey] jumping.

(3) Harnesses shall be available to fit the range of patron sizes accepted for jumping.

(4) There shall be a redundant connection (back-up) between the harnesses and the cord(s).

(5) All load supporting slings or webbing shall be flat tubular mountain climbing webbing or its equivalent. Minimum breaking strength shall be 6,000 pounds. Slings or webbing shall be formed by sewing, or properly tied with a "water knot" with taped ends.

(6) Carabiners shall be the steel crew gate type with a minimum breaking strength of 6,000 pounds. All carabiners shall be designed and constructed using the standards for mountain climbing gear.

(7) All ropes, pulleys, and shackles used to raise, lower, or hold the jumper shall have a minimum breaking strength of 6,000 pounds. All pulleys shall be compatible with the rope.

(8) All anchors shall meet or exceed the following:

(a) Where a single anchor is used to attach the bungee [bungey] cord to the platform, it shall have a factor of safety of twenty (20).

(b) Where two (2) anchors are used to attach the bungee [bungey] cord to the platform, each shall have a safety factor of five (5).

(c) Where the anchor(s) is made of wire rope, it shall have swaged ends with the thimble eyes.

(d) Where the anchor(s) is made of webbing or rope, it shall be manufactured by a company that normally supplies these anchors to crane and rigging companies.

(9) Test of all jumper harnesses and hardware have to be available to the inspector.

(10) All items to be serial numbered.
Section 7. Equipment Inspection and Testing. All bungee jumping sites or facilities shall comply with the following equipment inspection and testing criteria:

1. All bungee cords shall be inspected by the jump master. Frequency of inspection shall be stated in the operations manual. As a minimum the cord(s) shall be inspected prior to opening the site each day, and any other inspections as specified by the bungee cord manufacturer.

2. All jump rigging lowering system, platform, anchors, and safety gear shall be regularly inspected for damage or wear, by the jump master. Frequency of inspection shall be stated in the operations manual. As a minimum the equipment shall be inspected prior to opening the site each day, and any other inspections as specified by the equipment manufacturer.

3. All harnesses and harness rigging shall be inspected for damage or wear before use by each jumper.

4. Hardware subject to abnormal loadings, being impacted against hard surfaces, or having surface damage, shall be replaced.

5. Ropes, webbing, and slings subject to abnormal shock load shall be replaced.

6. Any items of equipment, rigging, or safety gear that are found to be substandard shall be replaced immediately. If a replacement is not available, jumping shall cease immediately, until a proper replacement is available.

7. Each item shall have its own permanent individual identification.

8. The application of this identification shall not harm the material of the item.

9. The identification shall be clearly visible to the operators during daily operations.

10. The identification shall be recorded on the equipment log sheet.

11. Recovery time between reuseage on each bungee cord after each use will be marked on cord and/or entered in log book by serial number.

Section 8. Jump Area or Jump Space. The following criteria regarding the jump space or jump area shall apply to all bungee jumping sites or facilities:

1. Jump area.

(a) The jump space is defined using dimensions in the lateral (perpendicular), and longitudinal (parallel) directions with respect to the jumper's direction of launch. The following criteria shall be used to design this space:

   1. Maximum system length - the maximum stretched length of a bungee cord system including static line length.

   2. Average cord length - the average of the unstretched (static) bungee cord system length and the maximum system length.

   (b) The jump space is defined in two (2) parts: top jump space and bottom jump space. The top jump is directly above the bottom jump space. The jump space is longitudinally and laterally centered under the jump point.

   (c) The bottom jump space is a box-shaped volume extending from ground level upward to an altitude lying below the jump point by a distance equivalent to fifty (50) percent of the maximum system length. The longitudinal dimension of this volume (length) is equivalent to 200 percent of the unstretched, static length of the bungee cord.

   (d) The top jump space is a pyramid-shaped volume. The four (4) base points of this pyramid shape are coincident with the topmost four (4) points of the bottom jump space. The top point of this pyramid shape is coincident with the jump point. (See Annex 1)

   (e) The jump space shall be free of obstructions with the exceptions of the water or air bag.

2. Over land.

(a) The jump area shall be fenced or other barriers provided. The fence or barriers shall be designed to prevent people and animals from entering the jump area.

(b) The jump area shall be free of spectators at all times.

(c) The jump area shall be free of any equipment or staff when a jumper is being prepared on the jump platform and until the jumper is stable after the jump.

(d) If the jumper is lowered for recovery, a clean, smooth, nonabrasive surface shall be provided for the jumper and cord(s). This recovery area shall be at least ten (10) feet by ten (10) feet.

(e) A place for the jumper to sit and recover shall be provided close to, but outside the landing area.

(f) An air bag certified for a fall from the platform height shall be in place centered under the jumper.

(g) There shall be adequate clearance between the jumper at full extension and the surface of the air bag.

(h) Adequate storage shall be provided on site to protect equipment from damage. The storage shall be secured against unauthorized entry.

3. Over water.

(a) The jump space/landing area shall be free of other vessels, floating and submerged objects and the public, and when in open water shall be defined by the deployment of buoys. A sign of appropriate size which reads "BUNGEE JUMPING KEEP CLEAR" shall be fixed to the four (4) sides of the buoy line.

(b) Minimum water depth shall be nine (9) feet.

(c) The recovery vessel shall:

   1. Be properly registered and/or certified by appropriate authorities.

   2. Be positioned accurately and remain in a constant position for the recovery.

   3. Have a landing pad size of at least five (5) feet by five (5) feet, within and lower than the sides of the vessel.

   4. Be able to be maneuvered in the range of water conditions expected and will enable staff to pick up a jumper or other person who has fallen into the water.

   5. Have a minimum of two (2) operators: one (1) pilot the vessel and at least one (1) other to assist jumper recovery. At least one (1) jumper recovery assistant shall be certified life guard.

   (d) Where the landing area is part of a constructed swimming pool complex or is specially constructed for bungee jumping the following shall apply:

   1. The pool size shall meet the requirements for the jump area size.

   2. The minimum water depth shall be nine (9) feet.

   3. Rescue equipment shall be available.

   4. The jump space and landing area shall be fenced.

   5. Only the operators and participants of the bungee jump shall be within the jump space and landing area.

Section 9. Site Manual. (1) Each site shall have an operating manual, referred to as the site manual, for the safe operation of the site. A copy of the manual and any amendments shall be held at each site, and shall be freely available to the staff. As a minimum, the manual shall include:

(a) A site plan view of the site with all components in place, fencing and the jump zone defined.

(b) Job descriptions/position duties and responsibilities.

(c) Personnel qualifications - required and actual.

(d) Staff training procedures and documentation.

(e) Inspection/maintenance procedures - to include inspection frequency, inspection standards, follow-up actions.

(f) Equipment descriptions/certifications/test documentation.

(g) Disaster/emergency plans procedures.

(h) Accident/incident reporting procedures.

(i) Examples of forms to be used.

(j) Examples of logs to be kept.

(k) Daily preopening inspection/maintenance procedures.

(l) Jumper restrictions - age, weight, medical, physical and mental condition.

(m) No jumper below the age of eighteen (18).

(n) No signed certificate allowed for permission under the age of eighteen (18).

(o) Jumper interview and acceptance procedures.

(p) Jumper preparation procedures.

(q) Jump procedures.

(r) Recovery procedures.

(s) Close-down procedures.

(t) State maximum weather conditions for safe operation.
Section 10. Operations. (1) There shall be an operating public address system on site.
(2) There shall be a telephone communication link to emergency medical and rescue services within a reasonable distance.
(3) A sign shall be posted listing the medical, weight, and age restrictions for jumpers. The sign shall be clearly visible to intending jumpers. Letters not less than one-half (1/2) inch.
(4) Symbol not less than three and one-half (3 1/2) inches across at any point required for person(s) not able to read the English language.
(5) KRS 247.226, Operation and Construction of Amusement Rides and Attractions, and applicable KARs will be complied with.
(a) Jumper jump area will be secured [enclosed with a mesh type fence constructed of steel, not less than five (5) feet four (4) inches in height with no opening less than two (2) inches except at gate hinge points and at locking catch and these areas only large enough for operation. Landing zone operator must clear the area during jump. Assign position or position will be marked for operator during jump.
(b) Floor will be constructed of steel where no solid material - material of steel to be mesh with no opening less than one (1) inch not greater than two and one-half (2 1/2) inch opening.
(c) The jumpers shall be instructed and prepared in a place separated from the jump point.
(d) Safety type ring to frame to connect to jumper while being prepared for jump at all times.
(e) Approved scales to be used in weighing jumper when fully prepared for jump (Kentucky Department of Agriculture, Division of Weights and Measures inspection of weighing device report must be posted.)
(f) Adjustments for the weight of each jumper shall be made by the jump masters selection of bungee [bungee] cord(s) and/or adjustment of the length of the rigging.
(g) The jump master shall stop the jumping operations when the weather conditions affect the safe operation of the site.
1. Wind speed and direction indicator with readout will be at jump platform.
2. Ceases operation instruction will be posted at each site indicating limitation due to operation and wind speeds or other factors due to weather.
(i) The mobile platform for jumping shall be a constant height above the ground or surface.
(i) All staff members shall be easily identifiable from the public or jumpers, by means of uniforms or similar clothing colors, etc.
(i) All operations and passengers on mobile platforms shall wear a safety beltharnness and lanyard attached to the anchor points, at all times the platform is elevated.
(k) The jumper, on a mobile platform shall wear a safety lanyard attached to the anchor points until jump height is reached.
(l) Bungee [bungee] "catapulting", "negative jumping", "reverse jumping" or "lauching" is prohibited.
(m) "Tandem", "double" or "multiple" jumping is prohibited.
(n) "Sandbagging" is prohibited.

Section 11. Unacceptable Operation Activities. The following equipment shall not be used at any bungee [bungee] jumping site or facility in the Commonwealth of Kentucky:
(1) Mobile or fixed type cranes not designed, manufactured, tested or intended to primarily handle personnel.
(2) Lighter than air type aircraft or aircraft not regulated by the Federal Aviation Administration such as hot air balloon, blimp, helicopter or other craft not certified by the Federal Aviation Administration.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference.
(a) The National Fire Protection Association (NFPA) 1983 Standard on Fire Service Life Safety Rope, Harness and Hardware, [1990 Edition]; and
(b) The "Safety Air Cushion Standards", [1992]-are incorporated by reference.
(2) This material may be obtained from the NFPA (4653)-Standard on Fire Service Life Safety Rope, Harness and Hardware (1990 Edition) and the Safety Air Cushion Standards (1992) can be inspected, and/or obtained, subject to copyright law at the offices of the Division of Weights and Measures, Kentucky Department of Agriculture, Frankfort, Kentucky 40601, [between the hours of 8 a.m. and 4:30 p.m.] Monday through Friday, 8 a.m. to 4:30 p.m.

Average cord length = \[\text{stretched length + relaxed length} \div 2\]

Cord length = length of bungee (bungee) cord + length of any rigging from jumper harness to anchor point.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: January 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:
(a) What this administrative regulation does: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky: designated bungee or similar apparatus.
(b) The necessity of this administrative regulation: Bungee devices are complicated and potential very dangerous amusement attractions. This regulation updates terminology and corrects the regulation numbering system.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of bungee attractions when manufacturer specifications are not available.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to bungee attraction operators where they have not been provided such information. This material provides Inspector a basis for inspection.
(2) If 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 updates terminology and corrects the regulation numbering system.
(b) The necessity of the amendment to the administrative regulation: This regulation updates terminology and corrects the regulation numbering system.
(c) How this amendment conforms to the content of the authorizing statutes: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of bungee attractions when manufacturer specifications are not available.
(d) How this amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to bungee attraction operators where they have not been provided such information. This material provides Inspector a basis for inspection.
(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately thirty-two (32) amusement businesses in the Commonwealth that use bungee devices.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The business will need to do nothing different 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): No additional costs will be incurred by the businesses.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation
(8) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any new fees directly or indirectly.
(9) TIERING: Is tiering applied? Yes, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 4:160. Capital construction process.

RELATES TO: KRS 156.160, 157.420, 162.060, 162.065, 162.070, 160.160, 322.360
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.420, 162.060, 162.065

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations establishing standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms. KRS 157.420 requires each school district's capital outlay to be utilized in accordance with the district's facility plan. KRS 162.060 requires approval of all school building plans and specifications by the chief state school officer. KRS 162.065 requires the KBE to prescribe administrative regulations governing construction managers. KRS 162.070 requires school construction contracts to be awarded to the lowest and best responsible bidder. KRS 322.360 requires a school district, when engaged in the construction of any public
work involving engineering, to utilize an architect or engineer to directly supervise the preparation of plans and specifications, estimates, and the execution of construction. KRS 323.033 requires the services of an architect for new buildings and additions or alterations to existing buildings classified as educational use group, including the administration of construction contracts. This administrative regulation establishes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions. (1) "IAIA" means the American Institute of Architects.

(2) "Architect" means any design professional licensed in the Commonwealth of Kentucky under KRS Chapters 322, 323, or 323A, which includes architects, engineers, and landscape architects.

(3) "Board" means the local board of education.

(4) "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years' construction management experience on projects of $500,000.00 to $1,000,000.00 or more, and the ability to provide the services required.

(5) "Contract documents" means the owner-contractor agreement conditions of the contract (general, supplementary, and other conditions), purchase orders, drawings, specifications, addenda issued prior to execution of the owner-contractor agreement, other documents listed in the owner-contractor agreement, and modifications issued after the execution of the agreement.

(6) "Division" means the Division of Facilities Management, Kentucky Department of Education (KDE).

(7) "Emergency" means the loss of use of physical facilities resulting from an unforeseen occurrence which requires prompt action.

(8) "Fixed equipment" means furnishings or equipment which are attached to the wall, floor, ceiling to operate or function in the manner intended by the product manufacturer. Examples of fixed equipment are bleachers, student lockers, casework with sinks, and plumbing fixtures.

(9) "KERA" means Kentucky Education Reform Act.

(10) "Moveable equipment" means any furnishings or equipment not considered fixed equipment.

(11) "Owner" means the local board of education or financing corporation established for the purpose of financing school construction.

(12) "Record drawings" means a set of reproducible drawings revised to indicate significant changes in the work during construction, including addenda, change orders, and construction change directives.

(13) "Superintendent" means the superintendent of the local school district or the employee the superintendent has selected to represent the board regarding construction issues.

Section 2. Construction Project Application. (1) The board shall submit an application on form BG #1 to the division for approval of a proposed construction project.

(2) An application shall be submitted for any project that is:

(a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay. Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476; or

(b) Proposing construction of a new building, addition, or alteration of an existing building which requires design by an architect for a building or building system.

(3) To initiate a project listed in its facility plan or a minor project permitted in subsection (8)(6) of this section, a vote by the board approving the project shall be required.

(4) When SFCC funds are included in the financing plan, projects shall be selected in prioritized order. If no SFCC funding is included in the financing plan, the board may select a project on its facility plan without regard to priority number.

(5) If a project exceeds $250,000, the superintendent shall submit the BG #1 to the division, and shall review the project scope and financing plan with the division.

(6) The BG #1 shall be accompanied by:

(a) A copy of the board's action, either by official board minutes or an unofficial excerpt signed by the board secretary verifying authenticity, approving the application; and

(b) A narrative justification of the construction project selection, including its priority over other projects relative to district goals and maximization of funding and benefits to students.

(7) (2) Within sixty (60) days of receiving the completed application documents, the BG #1 shall be approved by the division, if justified pursuant to the following criteria:

(a) Proposed project is on the facility plan or conforms to minor project criteria in subsection (8)(6) of this section;

(b) SFCC funding does not exceed the SFCC maximum budget established for the project;

(c) Application has original signatures;

(d) A board order; and

(e) The narrative justification.

(8) (6) The Division of District Operations/Finance, KDE, may give tentative approval based on a review of the board's ability to support the financing plan for the proposed construction budget.

(9) (4) The board may submit a BG #1 for minor projects not listed in the facility plan if the project meets the following criteria:

(a) Expansion of a permanent center or functional center to include a maximum of four (4) classrooms when documentation to support the request is provided for either student population growth or curriculum changes;

(b) Campus enlargement, minor renovation of buildings and building systems, or construction of an additional support space at permanent or functional centers when its need can be documented and justified; or

(c) Projects to comply with statutes and administrative regulations of other agencies having jurisdiction.

(10) If no action is taken by the board within one (1) year from the date of the BG #1 approval, the approval shall be no longer be effective.

(11) If the division considers the architect, CM, or board to be nonresponsive or causing undue delays in the design schedule, it may request the chief state school officer to revoke the BG #1 approval.

(12) If an emergency requiring the submission of a BG #1 occurs:

(a) The emergency shall be declared in accordance with KRS 424.260 or 45A.380, whichever is applicable; and

(b) The board shall:

1. Notify the division and request approval to proceed with the plans and corrective action; and

2. Submit to the division:

a. BG #1;

b. Copy of board order declaring the emergency; and

c. Copy of the written determination as required by KRS 45A.380 for those districts which have adopted the Model Procurement Code.

Section 3. Local Board Oversight Responsibilities. (1) Construction files and records shall be maintained by the superintendent in the central office and organized and accessible for review. Construction files and records include:

(a) Board actions;

(b) Proposals (bids);

(c) Contracts, contract documents, and record drawings;

(d) Correspondence; and

(e) Financial documents.

(2) During the design phases of new school building projects, limit the maximum gross area for elementary schools to 110 percent of the Total Gross Area of the Model Program Space, and limit the maximum gross area for middle and high schools to 115 percent of the Total Gross Area of the Model Program Space as given in 702 KAR 4:180.

(3) If the architect or the CM determines additional funding is justified or a reduction of physical scope of the project is needed,
the local board may approve the action if it believes it is justified and forward it to the division:

(d)(3) During the planning and bidding phase of the construction project, the board shall:
(a) Review bidding documents for compliance with statutes and administrative regulations, with particular attention to sales and use tax exemption when purchasing materials direct;
(b) Comply with all submission requirements resulting from the [completed plans and specifications] review of bidding documents by the division;
(c) Not advertise before receipt of written approval from the division;
(d) Advertise in the newspaper having the largest circulation in the school district the following number of days prior to the date established to receive bids:
1. $1,000,000 or less; project, a minimum of seven (7) days and
a maximum of twenty-one (21) days; or
2. A project in excess of $1,000,000, a minimum of twenty-one (21) days;
(e) Hold the bid opening:
1. In a location accessible to the public;
2. Between 10 a.m. and 3 p.m. (local time); and
3. Monday through Friday, excluding holidays;
(f) Accept the architect's and CM's evaluation of the bids and approve or reject their recommendations; giving consideration during the review process to businesses owned by minorities and women;
(g) [Review any bid package which receives only one (1) bid to ensure specifications allowed open competition. The board may approve the contract if the bid does not exceed 110 percent of the bid estimate and is within the budget for the project;]
(h) Ensure the CM completes the KDE Non-Collusion Affidavit [or Non-Collusion affidavit];
(i)(i) Hold possession of original bidding documents;
(ii) Approve and submit the successful bidders' documents to the division for review and approval of the proposed contract(s) and the financial plan; and
(iii) Have in its possession prior to executing the construction contract:
1. Contractor's performance and payment bond;
2. Certificate of required insurance;
3. Property insurance policy;
4. Written approval from the division; and
5. [Bids accepted for the bond sale, when applicable.]

(5)(4) During the construction administration of the project, the board shall:
(a) Name the superintendent or his or her representative, known as the owner's representative, to speak on behalf of the board as owner in the contract documents and set the parameters of that responsibility;
(b) Seek the superintendent's recommendation relative to proposed board actions;
(c) Approve all expenditures from the construction account;
(d) Seek SCCF approval of expenditures as applicable;
(e) At least once per month receive and review written on-site observation report and progress reports provided by the architect;
(f) Review the need for changes to the contract;
(g) Assign partial or full responsibility to the proper party if additional costs are due to an oversight or omission;
(h) Monitor the administration of the project by its architect and CM to ensure no prepayment is made for their services;
(i) After notifying the division, hire a professional services firm experienced in architectural, engineering, accounting, or construction management services to provide an audit of the construction project if the board suspects nonfeasance or malfeasance;
(j) Secure all required inspections and close out documents for submittal to the appropriate agencies;
(k) Receive a certificate of occupancy from the Department of Housing, Buildings, and Construction or local building code authority having expanded jurisdiction prior to occupying the facility;
(l) Retain a minimum five (5) percent retainerage of the construction contract until substantial completion of the work as defined in AIA Document A201-2007, General Conditions of the Contract for Construction [the division has issued a written approval to the architect to reduce the contract retainage or to make final payment on the contract];
(m) Require the superintendent or the owner's representative to participate in the year-end [warranty] inspection and report results of the inspection to the board;
(n) Contact the contractor's bonding company each month if the contractor is more than two (2) weeks behind schedule or is not performing in accordance with the contract; and
(o) Not hire additional architectural services outside the architect's contract without approval from the division.
(6)(6) If federal funds or federal agencies are involved, the board may request approval from the chief state school officer to waive or condense procedures to expedite the construction design process.

(6)(6) If a lien is filed with a court and the board is given notice of the lien, the board shall stop partial payments on the contract in the amount of the lien and contact the division. Payments may begin after:
(a) The lien has been released;
(b) The division has approved a payment schedule which provides for retaining the lien amount being contested; or
(c) The division has approved a payment schedule after a surety bond has been provided to pay the lien.

Section 4. Architectural Services. (1) The board and architect shall negotiate a contract for services required. The board shall either advertise for architectural services or select a minimum of three (3) architectural firms that [which] shall be evaluated through the request for proposal (RFP) process, giving consideration during the review process to businesses owned by minorities and women. Advertisement or RFP evaluation of three (3) firms is not required if the total construction cost of the project is estimated at less than $1,000,000.00 ($400,000.00) or is the continuation of phased construction at the same site.
(2) The architectural services shall be negotiated using the following documents:
(a) KDE Architect RFP; if utilized;
(c) KDE Non-Collusion affidavit; and
(d) KDE architect fee guideline as a percentage of the cost of construction, or a lump sum fee[or FFCC fee maximum].
(3) A letter of agreement stating services, terms, and conditions that have been approved by the board shall be acceptable in lieu of the AIA B101/B161 for projects with an estimated construction cost of less than $500,000.00 ($250,000.00). (4) The division shall review and approve the proposed architect's contract based on the following criteria:
(a) Copy of the board action approving the terms of the proposed contract;
(b) Scope and fee conformed to BG #1; and
(c) Submittal of required forms.
(5) The division shall advise the board of:
(a) Apparent deficiencies in completion of the contract;
(b) Discrepancies related to the scope of work and anticipated cost approved on the BG #1;
(c) Compliance of fee to fee schedule; and
(d) Concerns regarding modifications to the contract.
(6) The architect shall:
(a) Provide on-site visitation and shall report on the construction project to the board;
(b) Certify, to the best of his ability, professional judgment, and with due diligence, that all phases of the project have been completed in conformance with the approved plans and specifications and any authorized changes by signing the BG-4 form;
(c) Provide professional liability insurance [including errors and omissions insurance] in the following minimum amounts:
1. Projects [less than] $1,000,000.00 or less requiring $500,000.00 per claim and $1,000,000 aggregate per annum; $250,000.00 insurance with a two (2) percent maximum deductible;
2. Projects exceeding [from] $1,000,000 [to $10,000,000] require $1,000,000 per claim and $2,000,000 aggregate per annum [$500,000 insurance with a maximum five (5) percent deductible; and

3. Projects $10,000,000 or greater require $1,000,000 insurance with a maximum five (5) percent deductible.

(d) Require his consultants to retain professional liability insurance [including errors-and-omission-insurance] in the minimum amount of $250,000 aggregate, except structural design and mechanical-electrical-plumbing consultants shall carry a minimum amount of $1,000,000 aggregate for projects $1,000,000 or less, and $2,000,000 aggregate for projects exceeding $1,000,000 [with a maximum five (5) percent deductible];

(e) Provide copies of certificates of insurance to the division;

(f) Assist in preparing the bid advertisement for the board;

(g) List projects estimated in excess of $1,000,000 with a minimum of two (2) Kentucky construction reporting services;

(h) Submit to the board a written report that [which includes a statement of the project, dates and times architect was on site, conditions of the job, problems, delays, and concerns at least monthly after construction begins; and

(i) Request payment for construction administration phase fee at the same proportionate percentage as the construction's completion with five (5) percent of it being retained by the board until the approval of final payment on construction;

(j) Request approval by the owner's representative [board] for any reimbursement or additional service prior to the service being rendered or expenditure being made;

(k) When requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;

(l) Request additional payment for construction time or services extending [which extend] beyond the scheduled completion date, provided the [only if the owner is successful in receiving liquidated damages. Conditions to receive payments shall be:

(1) Additional costs were incurred through no fault of the architect firm and are documented due to the delay of the contractor, subcontractors, material suppliers, or vendors;

and

2. The pro-rata share shall be determined by the board as a ratio of validated architect's damages to the total of all documented damages;

(m) Utilize his consultants listed on the contract form for design, construction administration and observation of the work;

(n) Pay his consultants the same percentage proportion of their fee as he has received from the board;

(o) Pay his consultants eighty (80) percent of the architect's fee based on the construction cost of the consultant's work. If the architect's fee is a lump sum, the consultant shall receive the same proportionate amount;

(p) If a joint venture, list on the contract form [primary architect] and all necessary firm accountable to the board and provide the board with a copy of the joint venture contract indicating each party's responsibilities and fees;

(q) Provide Independent contractor administration over construction contracts awarded to the project's CM;

(r) Not include in the construction cost calculation change orders to the extent that the board has not requested. Changes to the contract requested by the board that decrease the construction cost shall be calculated at the hourly billing rate schedule or base fee percentage, whichever is less;

(7) The board shall provide oversight of the architectural services in the following manner:

(a) The architect's proposed contract shall be reviewed by the board's attorney for compliance with the law; and

(b) The board shall submit to the division for approval:

1. The proposed architect contract [and completed RFP];

2. A copy of the board order approving the contract;

3. A narrative of the selection and evaluation process; and

4. A copy of the certificate(s) of required professional liability insurance; and

5. A copy of the KDE Non-Collusion Affidavit(s).

Section 5. Construction Management Services. (1) A CM shall not be employed on any project estimated at less than $2,000,000 ($2,000,000) or without the approval of the division if the number of work categories negates the need for full-time, on-site supervision for projects in excess of $2,000,000 ($2,000,000). The division may approve exceptions as follows:

(a) If the project is a phase of a phased project and the CM is to be employed on all subsequent phases;

(b) If the project's complexity or fiscal soundness requires it.

(2) In hiring a CM, the board shall either advertise for CM services or select a minimum of three (3) construction management firms [which] shall be evaluated through the RFP process. Advertisement or RFP evaluation of three (3) firms is not required if the project is the continuation of phased construction at the same site.

(3) The board shall negotiate a contract using the following:

(a) KDE CM RFP; [If needed;]

(b) AIA A801/CM-322 AIA, Standard Form of Agreement Between Owner and Construction Manager and KDE amendment;

(c) KDE CM fee guideline or lump sum price;

(d) KDE Non-Collusion Affidavit [noncollusion affidavit];

(e) Projected number of months construction;

(f) On-site services fee per month; and

(g) Fee scale for construction cost and months.

(4) The number of months in the CM contract for the construction phase shall not be altered unless:

(a) There is a change in the scope of the work; and

(b) The owner, architect, and CM agree to the revised number of months during the evaluation of construction bids.

(5) The preconstruction phase payment shall be a maximum of ten (10) percent of the total proposed fee.

(6) The CM shall:

(a) Provide a 100 percent performance and payment bond prior to the construction contracts being executed by the board in the amount of the CM fee from an insurance firm authorized to do business in Kentucky and listed in and written within the terms and limits established in 31 C.F.R. 223;

(b) Provide professional liability insurance [with errors-and-omission insurance] in the following minimum amounts:

1. Projects of $10,000,000 or less, insurance in the amount of $500,000 [with a maximum five (5) percent deductible]; or

2. For projects in excess of $10,000,000, insurance in the amount of $1,000,000 [with a maximum five (5) percent deductible];

(c) Develop bid packaging to ensure at least five (5) known potential bidders are notified on each bid package;

(d) Not transport any bidder's proposal to the bid opening;

(e) Complete a KDE Non-Collusion Affidavit [noncollusion affidavit] relative to both the superintendent and local board members and the apparent low bidders;

(f) Request approval by the owner's representative [board] for any reimbursement or additional service fee prior to the service being rendered or expenditure being made;

(g) When requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;

(h) Request additional payment for construction time or services extending [which extend] beyond the scheduled completion date, provided the [only if the owner is successful in receiving liquidated damages. Conditions to receive payments shall be:

1. Additional costs were incurred through no fault of the construction management firm and are documented due to the delay of the contractor, material supplier, or vendor; and

2. The pro-rata share shall be determined by the board as a ratio of validated construction manager's damages to the total of all documented damages;

(i) Not include in the construction cost calculation change orders to the extent that the board has not requested. Changes to the contract requested by the board that decrease the construction cost shall be calculated at the hourly billing rate schedule or base fee percentage, whichever is less; and

(j) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion with five (5) percent of it being retained by the board until approval of the final payment on construction.
The board shall provide oversight of the CM services in the following manner:
(a) Retain an attorney to:
1. Review the contract as negotiated to ensure compliance with the law;
2. Request modifications to the contract as needed; and
3. Sign the contract form attesting to review;
(b) Take action approving the contract terms and conditions; and
(c) Forward to the division for review and approval:
1. Copy of the RFP and proposed contract;
2. Board order;
3. Narrative of the selection and evaluation process;
4. Certificate of required professional liability insurance; and
5. KDE Non-Collusion Affidavit (non collusion affidavit).

The CM contract shall be reviewed and approved by the division based on the following criteria:
(a) A copy of board order of approval;
(b) Fee based on a lump sum amount or fee guideline;
(c) Modifications to the contract comply with laws; and
(d) Submission of required forms.

Section 6. Plans and Specifications. (1) After approval of the BG #1 application by the division, the division shall provide a procedural checklist to the board that indicates required submissions for the project.
(a) The architect shall prepare a schematic plan of the proposed construction from written educational program specifications supplied by the board.
(b) The schematic plans and a copy of the educational program specifications, approved by board action with a copy of the minutes, shall be submitted by the board to the division for review and approval.
(c) The division shall review and approve the schematic plan submittal based on:
1. Site plans: proper siting of the building footprint provides appropriate access, vehicular and pedestrian circulation, separation of bus loading area from other vehicular traffic, parking, service, play and athletic areas, utility connections and drainage;
2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;
3. Functional aspects: review of the distribution of functions, or program space and the appropriateness for the needs of the facility;
4. 702 KAR 4:160, Model Program Space: maximum gross area of elementary schools is limited to 110 percent of Model Program Space Total Gross Area, and maximum gross area of middle and high schools is limited to 115 percent of Model Program Space Total Gross Area;
5. Building efficiency: review of the percent of net program area to gross building area to meet or exceed the guidelines of 702 KAR 4:160(4-004); and
6.6. Budget: review of the estimated construction cost (gross area multiplied by the cost per square foot, plus site development costs) in relation to the BG #1 Total Construction Cost. If the estimated construction cost exceeds the BG #1 Total Construction Cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board.
(2) After written approval of the schematic plans is received from the division, the architect shall prepare the design development plans.
(a) The board shall submit to the division for review and approval:
1. Design development plans;
2. Board order approving plans;
3. BG #2; and
4. BG #3.
(b) The division shall review and approve design development plans submittals based on:
1. Site plan: proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction and site drainage, with details appropriately developed;
2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;
3. Enlarged plans and details: appropriate to describe the design intention;
4. 702 KAR 4:160, Model Program Space: maximum gross area of elementary schools is limited to 110 percent of Model Program Space Total Gross Area, and maximum gross area of middle and high school is limited to 115 percent of Model Program Space Total Gross Area;
5. Building efficiency: the percent of net program area to gross building area meets or exceeds the guidelines of 702 KAR 4:160(4-004);
6.6. Budget: the Grand Total Cost on the Statement of Probable Cost (projected cost) exceeds the approved BG #1 Total Estimated Cost budget. If the Grand Total Cost (projected cost) exceeds the BG #1 Total Estimated Cost budget, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board;
7.6. BG #2 form is properly completed and conforms to the educational program specifications; and
8.6. Design development plans incorporate all previous schematic design review comments.

(3) After written approval of design development plans is received from the division, the completed plans and specifications and project manual shall be prepared by the architect and, if applicable, CMs, for bidding.
(a) The board shall submit to the division for review and approval:
1. Completed plans and specifications and project manual[if applicable];
2. Board order approving plans and specifications;
3. Revised BG #3; and
4. Proof of submission of completed plans to other agencies having jurisdiction.
(b) The division shall review and approve the completed plans and specifications and project manual submittals based on:
1. Compliance with 702 KAR 4:170, with special concern to reduce change orders during construction;
2. Compliance with state law regarding the seal, signature, and date of the documents by the architect and engineer [Each drawing and cover of the project manual has the architect's seal and signature affixed];
3. Documents are of sufficient detail and complexity that they may be used:
   a. To obtain a building permit;
   b. As instruments in the competitive bidding process; and
   c. By a general contractor to construct the project;
4. GG-3 Grand Total Cost does not exceed by ten (10) percent the approved BG #1 Total Estimated Cost budget;
5. Deed, certificate of title insurance to the property, deed of easements for all utilities, and proof of road and utility access for the project are filed with the division;
6. Proposed floor elevation is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and no state funds are proposed for renovation below the 100-year flood plain elevation;
7. Construction documents include the following forms to the extent applicable with KDE amendments appropriate for general construction or construction management:
   a. AIA A201, General Conditions;
   b. AIA A201/CM, General Conditions with CM;
   c. AIA A101, Owner-Contractor Contract;
   d. AIA A101/CM, Owner-Contractor Contract with CM;
   e. AIA A701, Instructions to Bidders;
   f. KDE Form of Proposal;
   g. AIA A310, Bid Bond;
   h. AIA A312, Performance and Payment Bond;
   i. AIA G702, Application for Payment;
   j. AIA G702/CM, Application for Payment with CM;
   k. AIA G701, Change Order;
   l. AIA G701/CM, Change Order with CM;
   m. AIA G704, Certificate of Substantial Completion;
n. AIA G704/CMa, Certificate of Substantial Completion with CM;
o. AIA G706, Contractors' Affidavit of Payment of Debts and Claims;
p. AIA G706A, Contractors' Affidavit of Release of Liens;
qu. AIA G707, Consent of Surety to Final Payment; and
r. AIA G707A, Consent of Surety to Reduction in or Partial Release of Retention.
6. A 100 percent performance and payment bond is required for any contract in excess of $25,000 and on all contracts using CM process from an insurance firm authorized to do business in Kentucky. The insurance firm shall be listed in and the performance and payment bond shall be written within the terms and limits established in 50 Federal Register, P. 53778, 1993.
9. Contractor(s) shall (are to) carry all insurance required by law and by contract to hold the board safe from loss until the project is completed or an occupancy permit is received by the board, except that unless otherwise provided in the bidding documents, the board shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy in the amount of the initial Total Construction Cost, plus value of subsequent contract modifications and the cost of materials supplied and installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles—is in the event the board elects to carry a portion of the necessary insurance, notification shall be given to the architect and CM and written into the bidding documents; and
10. Notification of other state and local agencies having jurisdiction, including:
(a) Department of Housing, Buildings and Construction;
b) Division of Building Codes (Code) Enforcement;
c) Division of Plumbing;
d) Division of Water;
e) Division of Air Quality; and
(f) Local health department; and
(g) Local building inspector.
4. The board shall receive written approval of the construction bidding documents and authorization to bid from the division prior to advertisement for bids.
5. Performance specification procedures may be used by the board for proposed capital construction projects. The proposed performance specifications as prepared by the board shall be approved in writing by the division prior to advertisement for bids.
6. Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment, capital construction, or alterations to existing buildings and building systems shall require the submittal of plans and specifications and lease documents to the division for review and approval.
Section 7. Construction Bidding, Bond Sale, and Contracting.
1. A minimum of ten (10) working days prior to the scheduled bond sale date, the board shall submit to KDE for review and approval:
(a) To the division:
  1. Bid tabulation(s);
  2. Bid security(ies);
  3. Proposal form of successful bidder(s);
  4. Proposed contract(s) or purchase order(s) (unsigned);
  5. Revised financial form (BG #1, page 3) to coincide with proposed construction costs;
  6. Architect's written recommendation regarding award of contract and
(b) To the Division of District Operations [Finance], KDE:
  1. Preliminary official statement;
  2. Notice of bond sale; [and]
  3. Official terms and conditions; and
  4. Plans of financing.
2. If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.
(3) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of KDE when school revenue bonds are proposed for sale.
(4) Bids for school revenue bond sales shall be received in Frankfort, Kentucky, at:
1. Kentucky Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower; or
2. SFCC, 228 W. Main St., Suite 102, Frankfort, Kentucky 40601 [Capital Annex], if SFCC funds are involved.
(b) A KDE or SFCC staff member shall be present to receive the bids.
(c) Bids shall be delivered by mail, in person, by telephone, electronically or by facsimile (fax) machine. If the apparent winning bid is telephoned, the bid shall be reaffirmed by fax within thirty (30) minutes after the bid opening.
5. The division shall approve a proposed construction contract based on:
(a) Submission of tabulation of bids, form of proposal, bid security and proposed contract;
(b) Board order indicating low bid was accepted or written justification provided where other than low bid is proposed;
(c) Proposed construction contract is within approved budget; and
(d) Form of proposal is completed in accordance with the instructions to bidders.
6(a) Any discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.
(b) The board's desire to waive irregularities and informalities as to a bid shall be reviewed and final judgement made by the division prior to approval of the contract and financing plan.
(c) Approval of the proposed contract by division shall not indicate the contract is the best or the most reasonable.
(7) The Division of District Operations [Finance], KDE, shall issue the final approval for the financing plan, authorize the bond sale, and prepare the approval letter for the chief state school officer or his or her designee [chief state school officer or his or her designee].
(b) No negotiation of the bid price shall be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.
(9) Construction account expenditures that are subject to bidding shall be approved by the division, except for expenditures for moveable equipment.
(10) The board shall submit to the division:
(a) Copy of the executed contract(s) and purchase order(s);
(b) Insurance certificate(s), a copy of the property insurance policy; and
(c) Copy of the 100 percent performance and payment bond(s).
Section 8. Contract Change Orders. (1) All change orders shall be submitted to the division, and shall be accompanied with the following:
1. Copy of local board action approving the change order;
2. Property[Property] completed KDE Change Order Supplemental Information Form; and
3. Cost breakdown which separates labor, material, profit and overhead. If unit prices are utilized, this cost breakdown shall not be necessary.
(b) Changes in the contract which do not substantially alter the nature of the contract, or may be regarded as incidental to or which relate to an integral part of the original contract and specifications, may be approved by the division.
(c) A copy of any change order using the forms AIA G701 or AIA G701/CMa issued in connection with the project shall be signed by the appropriate parties as a recommendation and shall be subject to approval by the board.
(2) Any additive or deductive change order proposal in excess of $7,500 ($5,000) shall be subject to approval by the division prior to execution.
(3) Approval of proposed change orders over $7,500 ($5,000) shall be based upon:
(a) Completed supplemental information form, bond order, and cost breakdown;
(b) Cost [es] calculated according to contract unit prices or alternative method with documentation [es] provided to support cost;
(c) The change order scope and cost are considered within the norm based upon the information submitted; and
(d) Cumulative cost of contract and all change orders are within the approved budget.

(4) The division approval shall not indicate the change order cost is the best cost or the requested change order is the most appropriate action.

Section 9. Construction Contract Retainage. (1)(a) The board shall retain ten (10) percent from each application for payment up to fifty (50) percent completion of the work, then, provided the work is on schedule and satisfactory, and upon written request of the contractor together with written consent of surety and the recommendation of the architect, the board shall approve a reduction in retainage to five (5) percent of the current contract sum.

(b) No part of the five (5) percent retainage shall be paid until after substantial completion of the work, as defined in AIA A201-2007, General Conditions of the Contract for Construction, the division has made a final on-site review of completed instructional space and has provided written approval for final payment or further reduction in retainage.

(c) After substantial completion of the work, if reasons for reduction of the retainage is certified in writing by the architect [and approved by the board], a reduction to a lump sum amount less than the five (5) percent retainage shall be approved by the board provided: (1) the division deems it reasonable. The minimum lump sum retainage amount shall be twice the estimated cost to correct deficient or incomplete work.

(2) The board shall request a final on-site review by the division after approval of the architect's certification of substantial completion.

(2) The investment earnings resulting from any agreement entered into by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in such a manner that any additional income from the investment shall accrue only to the board.

Section 10. Construction Dispute Resolution. (1) Unresolved claims between parties arising out of or relating to any contract subject to this administrative regulation shall not utilize arbitration or the American Arbitration Association unless agreed to by all parties.

(2) Prior to the initiation of legal proceedings, unresolved claims arising out of or relating to any contract shall be submitted to mediation, which shall be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect on the date of the contract and, if the parties fail to resolve their disputes through mediation, to binding dispute resolution by the Mediation Center of Kentucky, 573 West Short Street, Suite 200, Lexington, Kentucky, or any other non-profit mediation council-approved by the division.

(3) Mediation may be initiated by written request filed by any party.

Section 11. Construction Contract Closeout Process. (1) The architect shall furnish the board a form BG #4 with applicable information requesting final approval.

(2)(a) If the board approves the construction contract is complete, it shall approve the BG #4 and forward it to the division for review and approval of the final payment.

(b) If the board does not agree that the construction contract is complete, a letter to the division shall be issued to indicate those items in contention or requiring completion.

(c) Written approval by the division authorizing full payment of the contract shall be given when the completed BG #4 form is approved.

Section 12. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the division of malfeasance or nonfeasance by the architect or CM shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the KDE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years

(3) The KDE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm(s) during the penalty period, upon recommendation by the chief state school officer the KDE may determine that the penalty invoked shall also apply to that firm.

Section 13. Documents Incorporated By Reference. (1) The following documents are incorporated by reference:

(a) BG #1-2008[


(d) KDE Non-Collision Nondisclosure Affidavit, May, 1993;

(e) KDE Architect RFP, May, 1993;

(f) KDE Architect Fee Guideline, May, 1993;

(g) KDE Construction Manager (CM) RFP, May, 1993;

(h) AIA B801/CMA-1992 AIA, Standard Form of Agreement Between Owner and Construction Manager and KDE Amendment, May, 1993;

(i) KDE CM Fee Guideline, May, 1993;

(j) BG #2, 2008[.May-1993], Outline Specifications;

(k) KG #3, 2008[.May-1993], Statement of Probable Construction Cost;

(l) AIA A201-2007[.41999]; General Conditions of the Contract for Construction and the KDE Amendment, 2008[.April-2006];


(n) AIA A101-2007[.41997], Standard Form of Agreement Between Owner and Contractor and KDE Amendment, 2008[.April-2006];


(p) AIA A701-1997, Instructions to Bidders and KDE Amendment, April, 2000;

(q) KDE Form of Proposal, April, 2000;

(r) AIA A310-1970, Bid Bond;

(s) AIA A312-1984, Performance Bond and Payment Bond and KDE amendment, May, 1993;

(t) AIA A702-1992, Application and Certificate for Payment;


(v) AIA A701-2000, Change Order;

(w) AIA A701/CMA-1992, Change Order-Construction Manager-Adviser Edition;

(x) AIA A704-2000, Certificate of Substantial Completion;

(y) AIA A704/CMA-1992, Certificate of Substantial Completion-Construction Manager-Adviser Edition;

(z) AIA G706-1994, Contractors' Affidavit of Payment of Debts and Claims;

(aa) AIA G706A-1994, Contractors' Affidavit of Release of Liens;

(bb) AIA G707-1994, Consent of Surety to Final Payment;

(cc) AIA G707A-1994, Consent of Surety to Reduction in or Partial Release of Retainage;

(dd) 31 C.F.R. 223, 2002[.999];

(ee) KDE Change Order Supplemental Information, April, 2000;

(ff) KDE Purchase Order Form, May, 1993;

(gg) KDE Material Supplier Authorization Form, May, 1993; and

(hh) BG #4, 2008, Project Closeout Form;

(i) AIA B214-2007, Standard Form of Architect's Services LEED Certification;

(j) AIA G501-2007, Notification of Amendment to the Professional Services Agreement; and


(2) This material may be inspected, copied, and except for the AIA documents, from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, 500 Meri
This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Intern Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

1. Provide a brief summary of:
   a. What this administrative regulation does: This administrative regulation establishes standards that school districts shall meet in operational performance, including construction of public school buildings and the use of uniform forms.
   b. The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.060, KRS 156.070, 157.420, 160.160, 162.065, 162.070, 322.360 and 323.033 that set forth the Kentucky Board of Education's responsibility to establish standards that districts shall meet in the construction and execution of construction projects.
   c. How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific standards for the construction process required in KRS 156.060, KRS 156.070, 157.420, 160.160, 162.065, 162.070, 322.360 and 323.033.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation provides specific standards for the construction process required in KRS 156.060, KRS 156.070, 157.420, 160.160, 162.065, 162.070, 322.360 and 323.033.
   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 provides an update to align with the 2007 American Institute of Architect Standards (AIAS). Other revisions are a result of recommendations from the Auditor of Public Accounts Report (9/7/07) and the School Facilities Task Force Report (9/30/06). The amendment also incorporates some requirements from the Kentucky Fairness in Construction Act.
      b. The necessity of the amendment to this administrative regulation: This amendment is necessary to establish standards that districts shall meet in operational performance and execution of school construction and align standards and incorporate recommendations from the Auditor of Public Accounts, School Facilities Task Force report, and the Kentucky Fairness in Construction Act.
   f. How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes by establishing standards that districts shall meet in operational performance and execution of school construction.
   g. How the amendment will assist in the effective administration of the statutes: This amendment provides specifics for the school construction process.
   h. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education, design consultants and contractors.
   i. If provided an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will provide a comprehensive set of uniform construction documents for use by school districts, design consultants and contractors.
   j. List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts, design consultants and contractors will abide by the standards and requirements set forth. Kentucky Department of Education staff will continue to review all construction projects for compliance with the amendments to this regulation.
   k. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.
   l. As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have the guidance establishing standards that districts shall meet in operational performance and execution of school construction. Department of Education staff will have updated regulations that support and incorporate the standards and recommendations from the Auditor of Public Accounts, School Facilities Task Force report, and the Kentucky Fairness in Construction Act.
   m. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      a. Initially: proposed amendment does not result in additional costs.
      b. On a continuing basis: The proposed amendment does not result in additional costs.
      c. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary.
      d. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, or by the change if it is an amendment: No additional funding is necessary.
      e. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
      f. TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.060, KRS 156.070, 157.420, 160.160, 162.065, 162.070, 322.360, and 323.033
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

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

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 6:010. Local responsibilities.
RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. 1751-1769b, 42 U.S.C. 1771-1779
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is promulgated under the authority of the Kentucky [State] Board of Education [Elementary and Secondary]. Education's mandate to implement federal education assistance programs and is needed to carry out the congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. Also, it holds a local agency accountable for its program. This administrative regulation describes the local responsibilities of school districts and school governing bodies in the provision of nutritional programs [Reconsideration and rolling of the administrative regulation is required pursuant to KRS 156.031].

Section 1. The operation of all school nutrition [feed-service] programs in the public, private, parochial and state schools shall be the responsibility of the local board of education or the governing body of the schools.

Section 2. Rules and administrative regulations shall be developed by local governing bodies regarding the employment, dismissal, promotion, work assignments, emergency leave, sick leave, vacation leave, retirement, insurance, workmen's compensation and salary schedules providing at least minimum wage in accordance with minimum wage laws.

Section 3. Rules and administrative regulations shall be developed by local governing bodies regarding purchasing food and equipment, cost of meals, storage and sanitation, and financial accounting and safeguarding of funds. These rules shall be in compliance with applicable local, state or federal laws, and regulations.

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

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel
Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: Sets out the responsibility of the local school districts for the operation of the school nutrition programs.
(b) The necessity of this administrative regulation: The Kentucky Board of Education (KBE) is required by KRS 156.160 to promulgate regulations dealing with the health and safety of students.
(c) How this administrative regulation conforms to the content of the authorizing statute: It requires local school districts to take responsibility for the school nutrition programs operating in their buildings and to adopt policies regarding personnel working in the programs and procurement of food and supplies used in the programs.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See above.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Updates the name of the Kentucky Board of Education and changes references to "food service" to "nutrition".
(b) The necessity of the amendment to this administrative regulation: More accurately reflects current statutes, program nomenclature and expectations.
(c) How the amendment conforms to the content of the authorizing statute: Same as above.
(d) How the amendment will assist in the effective administration of the statutes: Same as above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 public school districts.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater public perception of program goals.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.031, 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? 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 (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable

2. State compliance standards. KRS 156.160

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Responsibility)

702 KAR 6:020, District school nutrition director.

RELATES TO: KRS 156.031, 160.290, 160.380, 161.020

STATUTORY AUTHORITY: KRS 156.035, 156.070, 156.160, 158.052

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is required to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This administrative regulation describes the policies and procedures to be followed by the district school nutrition director. Reconsideration and rolling of this administrative regulation is required pursuant to KRS 156.031.

Section 1. Each local school district shall appoint a school nutrition director. Two or more contiguous districts may appoint one (1) person to fill the role of school nutrition director. If a local board has determined such a need, then the position shall be staffed by the local superintendent.

Section 2. A district school nutrition director shall work with central office personnel, principals, and school based decision making councils, cafeteria staff, nurses and staff (other school food service personnel) to plan, develop, administer, and supervise the school nutrition program on a district wide basis.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(1).

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9521.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: Addresses various personnel policies, qualifications and professional development regarding the local district school nutrition program director.
(b) The necessity of this administrative regulation: The Kentucky Board of Education (KBE) is required by KRS 156.160 to...
promulgate regulations dealing with the health and safety of students.

(c) How this administrative regulation conforms to the content of the authorizing statute: It sets qualifications for the position of local district school nutrition program director.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It seeks to ensure that qualified persons fill these important positions.

(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: Includes the requirements of KRS 158.852(2); the stipulations of KRS 158.852(1) and changes references to “food service” to “nutrition”.

B. The necessity of the amendment to this administrative regulation: More accurately reflects current statutes, program nomenclature and expectations.

C. How the amendment conforms to the content of the authorizing statute: same as above.

D. How the amendment will assist in the effective administration of the statutes: Help ensure that these important positions are filled by qualified persons.

E. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 public school districts.

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) A list of actions that each of the regulated entities identified in question 3 will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question 3: Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: Greater public perception of program goals.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: None

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

(b) How much 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 (+/-): Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. KRS 156.160, KRS 156.852

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION CABINET

Kentucky Board of Education

Department of Education

(Amendment)

702 KAR 6:040. Personnel; policies and procedures.

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. sec. 1751-sec. 1769, 42 U.S.C. sec. 1771-1779

STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is promulgated under the authority of the Kentucky (State) Board of Education's mandates to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This administrative regulation describes the policies and procedures to be followed by a school district in employing local school nutrition food-service personnel. [Repeal and reenactment of the administrative regulation is required pursuant to KRS 156.031.]

Section 1. Each school district shall employ school nutrition food-service personnel in a procedure consistent with KRS 160.380 and 702 KAR 6:045.

Section 2. Each school district, through its superintendent, shall notify in writing each full-time school nutrition lunch employee of the hours, terms and conditions of employment, lines of authority, and general responsibilities. Each district shall include an appropriate service termination policy for both the district and employee.

Section 3. Each school district shall establish and adopt a uniform pay scale for all full-time school nutrition food-service employees.

Section 4. Each school district shall provide workmen's compensation and fulfill minimum hourly wage rates for school nutrition food-service personnel.

Section 5. The superintendent shall cause school nutrition food-service personnel to avail themselves of training programs when such are offered.
Section 6. Social security participation for school nutrition[food services] personnel shall be in keeping with social security policies for other nonprofessional personnel.

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

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify the agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Addresses various personnel policies regarding the school nutrition programs.
   (b) The necessity of this administrative regulation: The Kentucky Board of Education (KBE) is required by KRS 156.160 to promulgate regulations dealing with the health and safety of students.
   (c) How this administrative regulation conforms to the content of the authorizing statute: It sets procedures for the hiring of school nutrition personnel.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See response to 1(c).
   (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: Updates the name of the Kentucky Board of Education and changes references to "food service" to "nutrition".
      (b) The necessity of the amendment to this administrative regulation: More accurately reflects program nomenclature and expectations.

(2) How the amendment conforms to the content of the authorizing statute: Same as above.

(3) How the amendment will assist in the effective administration of the statutes: Same as above.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 public school districts.

(5) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater public perception of program goals.
   (d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
      (a) Initially: Nothing
      (b) On a continuing basis: Nothing
   (e) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
   (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: Not applicable.
   (g) Whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 (+/-):
   Expenditures (+/-):
   Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.
2. State compliance standards. KRS 156.031, 156.160
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.
VOLUME 35, NUMBER 9—MARCH 1, 2009

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)


RELATES TO: KRS 156.031, 156.160

STATUTORY AUTHORITY: KRS 156.160

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and re-submitted to the Legislative Research Commission prior to December 30, 1996] KRS 156.160 requires the [State] Board offer[Elementary and Secondary] Education to adopt administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of public school children. This administrative regulation prescribes necessary qualifications and training of beginning school nutrition[food-service] employees.

Section 1. No person shall work, or be allowed to so work, in a school kitchen unless he or she is physically and mentally able to do so safely and satisfactorily and meets the requirements of 902 KAR 45:005, Section 11.

Section 2. A condition of initial employment in a school kitchen shall be completion of the beginning school nutrition[food-service] personnel training course prescribed by the [State] Board offer[Elementary and Secondary] Education and issuance of a Kentucky school nutrition[food-service] employee certificate by the chief state school officer, based upon evidence submitted to the Kentucky Department of Education, Division of Nutrition and Health[School-Food] Services, from a certified instructor that all training requirements have been fulfilled under the provisions of this administrative regulation. The prescribed training course for certification of beginning school nutrition[food-service] personnel shall consist of the following instructional units and minimum instructional clock hours:

(1) School food service rules and administrative regulations - 1 hour;
(2) Sanitation - 1 hour;
(3) Safety and first aid - 1 hour;
(4) Food preparation and merchandising - 1 hour;
(5) Equipment use and care - 1 hour;
(6) Efficient use of resources - 1 hour; and
(7) Nutrition education - 1 hour.

Section 3. Those Incumbent school nutrition[food-service] personnel who voluntarily complete the beginning school nutrition[food service] personnel training course shall also be issued a Kentucky school nutrition[food-service] certificate as prescribed in Section 2 of this administrative regulation.

Section 4. All certificate holders shall be required to renew their certificates annually by satisfactorily completing a minimum of four (4) hours of in-service training conducted by a certified instructor and relevant to the curriculum established under the standards set forth in Section 2 of this administrative regulation.

Section 5. The local school food authority may issue a temporary school nutrition[food-service] employee permit if it is necessary to initially employ an applicant on an emergency basis as a replacement or additional staff position, provided that the applicant meets the qualifications set forth in Section 1 of this administrative regulation. This permit shall be valid only for a period of forty (40) work days and shall be nonrenewable. In order to continue working after this forty (40) day period has expired, the applicant shall fulfill the requirements of Section 2 of this administrative regulation.

Section 6. Beginning substitute school nutrition[food-service] personnel shall fulfill the following requirements:

(1) Be employed with a temporary permit for forty (40) work days from the date of employment;
(2) A substitute certificate shall be issued upon completion of four (4) hours of training as defined in Section 2 of this administrative regulation in the following areas:
   (a) Equipment use and care;
   (b) Safety and first aid;
   (c) Sanitation; and
   (d) Food preparation and merchandising.
(3) Renewal of this certificate shall be based upon satisfactorily completing two (2) hours of training in any of the areas listed in Section 2 of this administrative regulation.

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

ELAINA FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4774, fax (502) 564-9521.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: Addresses qualifications for school nutrition personnel.
(b) The necessity of this administrative regulation: The Kentucky Board of Education (KBE) is required by KRS 156.160 to promulgate regulations dealing with the health and safety of students.
(c) How this administrative regulation conforms to the content of the authorizing statute: It sets minimum standards for the initial employment and continuing education of personnel who work in school nutrition programs at the school level.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See response to (c).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Updates the name of the Kentucky Board of Education and changes references to "food service" to "nutrition".
(b) The necessity of the amendment to this administrative regulation: More accurately reflects program nomenclature and expectations.
(c) How the amendment conforms to the content of the authorizing statute: Same as above.
(d) How the amendment will assist in the effective administration of the statutes: Same as above.

- 2154 -
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 public school districts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater public perception of program goals.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: Nothing
   (b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Not applicable
2. State compliance standards, KRS 156.160
3. Minimum or uniform standards contained in the federal mandate: None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 6.075. Reports and funds.

RELATES TO: KRS 156.010, 156.031, 156.035, 156.100, 156.200, 156.480, 42 U.S.C. 1751-1969b, 42 U.S.C. 1771-1789, 7 C.F.R. 210.9, 7 C.F.R. 210.14, 7 C.F.R. 210.15
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is promulgated under the authority of the Kentucky Board of Education's mandate to implement Federal education assistance programs and is needed to carry out the Congressional intent of the National School Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This administrative regulation is necessary to properly protect all funds accruing to the local school nutrition[food-service] program.

Section 1. A local board of education shall be responsible for the safeguarding of all funds accruing to its school nutrition[food-service] program and shall adopt a plan for handling those funds and bonding all personnel who receive or handle such funds.

Section 2. All revenue received by the school nutrition[food-service] program, including, but not limited to, funds received as payments for meals by students and adult, federal and state reimbursements, and any interest earned on deposits of federal and state reimbursements shall be used only for the operation or improvement of the school nutrition[food-service] program.

Section 3. School nutrition[food-service] funds shall not be used to purchase land or acquire or construct buildings.

Section 4. All school districts[schools] approved for participation in the federal school nutrition[food-service] program(s) shall make required monthly reports as prescribed by the Department of Education. A copy of the report(s) submitted to the Department of Education, as well as other financial records and reports pertaining to the school nutrition[food-service] program and applications for free and reduced price meals shall be kept by the local board of education for a period of three (3) fiscal years after the close of the fiscal year applicable to such records and those shall be subject to audit by appropriate state or federal officials.

Section 5. All school meals for which federal reimbursement is claimed shall be priced as a complete unit.

Section 6. A local school nutrition[food-service] program shall be operated on a nonprofit basis where actual cash balances shall not exceed three (3) months' operating balance.

[Section 7.—The forms referenced in Section 4 of this administrative regulation are incorporated by reference. The effective date of the forms is October 10, 1980. A copy of the form may be obtained by contacting the Division of School Food Services, attention: Betty Williamson, 564-6390. The material is available for inspection and copying during the hours of 8 a.m. to 4:30 p.m.—EST—in Room 614, Capital Plaza Tower, Frankfort, Kentucky]
Its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no 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 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 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: Addresses use and safe-guarding of school nutrition program funds as well as timing and formatting of required program reports.
(b) The necessity of this administrative regulation: Federal and state statutes governing the operation of the Child Nutrition programs.
(c) How this administrative regulation conforms to the content of the authorizing statute: It sets standards for how funds are to be used and safe-guarded as well as standards and timelines for required reporting.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See response to 1(c).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Updates the name of the Kentucky Board of Education; changes references to "food service" to "nutrition"; acknowledges use of technology by districts and KDE.
(b) The necessity of the amendment to this administrative regulation: More accurately reflects program nomenclature, expectations and use of technology.
(c) How the amendment conforms to the content of the authorizing statute: Same as above.
(d) How the amendment will assist in the effective administration of the statutes: Same as above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 public school districts.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater public perception of program goals.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 156.010, 156.031, 156.035, 156.100, 156.200, 156.483, 42 U.S.C. 1751-1969b, 7 C.F.R. 210.9, 7 C.F.R. 210.14, 7 C.F.R. 210.15
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? 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 (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. See attached.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.
VOLUME 35, NUMBER 9 – MARCH 1, 2009

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Commissioner)

702 KAR 6:090. Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports.

RELATES TO: KRS 156.035, 156.160, 156.200, 158.854(1), 158.856, 160.345

STATUTORY AUTHORITY: KRS 156.160, 158.854(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.854(1) requires the Kentucky Board of Education to promulgate an administrative regulation to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales. KRS 158.854(1) requires that the administrative regulation address serving size, sugar, and fat content of the foods and beverages. This administrative regulation establishes the minimum nutritional standards for food and beverages available on the school campus during the school day and establishes reporting requirements for local school districts for nutrition and physical activity.

Section 1. Beverages. During the period of time beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a beverage offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall:

(1) Be a:
(a) Fluid unflavored or flavored milk that is no more than one (1) percent milk fat;
(b) Plain or flavored, noncarbonate, noncarbonated water;
(c) 100% fruit or vegetable juice or any combination of both totaling 100%; or
(d) Any other beverage that contains no more than ten (10) grams of sugar per serving, except this limit shall not apply to 100% fruit or vegetable juice or any combination of both equaling 100%; and
(2)(a) Except as provided in paragraph (b) of this subsection, not exceed a volume size of seventeen (17) ounces, except for plain or flavored, noncarbonated water; or
(b) For sales to middle school or high school students (grade six (6) through twelve (12)), the volume size of a beverage shall not exceed twenty (20) ounces.

Section 2. Food. During the period beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a food item offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall meet the following standards:

(1) Calories from fat shall not exceed thirty (30) percent, excluding reduced fat (two (2) percent milk-fat or less), cheese, nuts, seeds, and nut butters.
(a) This shall be determined by dividing the calories from total fat by the total calories and multiplying by 100.
(b) If the calories from fat are not available, the grams of fat shall be multiplied by nine (9) to equal calories from fat;
(2) Calories from saturated fat shall not exceed ten (10) percent.
(a) This shall be determined by dividing the calories from saturated fat by the total calories and multiplying by 100.
(b) If calories from saturated fat are not available, the grams of saturated fat shall be multiplied by nine (9) to equal calories from saturated fat;
(3) Calories from sugar shall not exceed thirty-two (32) percent by weight.
(a) This shall be determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This shall include both naturally-occurring and added sugars.
(b) The grams of sugar shall not exceed fourteen (14) grams.

(4) The limit established in this subsection shall not apply to fresh, frozen, canned or dried fruits and vegetables;
(5) (a) Chips, cereals, crackers, baked goods, and other snack items shall not contain more than 300 milligrams of sodium per serving;
(b) Pastas, meats, and soups shall not contain more than 450 milligrams of sodium per serving;
(c) Pizza, sandwiches, and main dishes shall not contain more than 600 milligrams of sodium per serving;
(6) The portion or pack size for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, or jerky shall not exceed two (2) ounces;
(7) The portion or pack size for cookies shall not exceed one (1) ounce;
(8) The portion or pack size for cereal bars, granola bars, pastries, muffins, doughnuts, bagels, or other bakery-type items shall not exceed two (2) ounces;
(9) The portion or pack size for nonfrozen yogurt shall not exceed eight (8) ounces; and
(10) The portion or pack size for frozen dessert items, including low-fat or fat free ice cream, frozen fruit juice bars, or frozen real fruit items, shall not exceed four (4) ounces.

Section 3. A la carte items. A food or beverage item offered for sale as an a la carte item on the cafeteria line during the serving of breakfast or lunch shall meet the following standards:

(1) A beverage shall meet the standards established in Section 1 of this administrative regulation; and
(2) A food item shall meet the standards established in Section 2 of this administrative regulation, except schools may offer for a la carte sale any item that is creditable under the School Breakfast or National School Lunch Program meal patterns as set forth in 7 C.F.R. 220.8 and 210.10, respectively.

Section 4. If a school does not have a school breakfast program or the effective date of this administrative regulation, the school may conduct a breakfast food and beverage activity that:

(1) Involves students and is intended as a student learning opportunity;
(2) Offers only food and beverage items that meet the minimum nutritional standards of KRS 158.854 and Sections 1 and 2 of this administrative regulation; and
(3) Concludes at least three (3) hours prior to the first lunch period.

Section 5. Local District Nutrition Program Report. (1)(a) A school nutrition[food-service] director of the local district shall complete the assessment of the nutrition program required under KRS 158.856 and issue a report for the 2005-2006 school year at latest sixty (60) days prior to the public forum required by KRS 158.856(5).
(b) The director may issue the report via posting to the district Web site.
(c) A local district superintendent shall submit a summary of the findings and recommendations of the nutrition report as required by KRS 158.856(5) to the Kentucky Department of Education by May 1, 2006, and by May 1 of each succeeding year.
(2) If the Department of Education completes review of a district's nutrition program during the school year prior to the deadline established in subsection (1) of this section, the report and recommendations of that review may constitute the district's annual assessment and report issued in accordance with subsection (1) of this section.

Section 6. Student Physical Activity. (1) A local district superintendent shall evaluate the student physical activity environment, including the amount of time and types of physical activity provided in the elementary schools, as required in KRS 160.345(11) and release the report at least sixty (60) days prior to the public forum required by KRS 158.856(5).
(2) A local district superintendent shall submit the report on physical activity, including a summary of findings and recommendations to the Department of Education by May 1, 2006, and by May 1 of each succeeding year.
(3) The superintendent may release the report via posting to the district Web site.

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

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 28, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify the agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:
(a) What this administrative regulation does: Implements the requirements of KRS 158.854.
(b) The necessity of this administrative regulation: KRS 158.854 required it.
(c) How this administrative regulation conforms to the content of the authorizing statute: It sets standards for foods and beverages sold outside the school breakfast program and school lunch program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets the specific standards generally referred to in the statute.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Changes a reference to "food service" to "school nutrition".
(b) The necessity of the amendment to this administrative regulation: More accurately reflects program expectations.
(c) How the amendment conforms to the content of the authorizing statute: Emphasizes "nutrition" not just "food service".
(d) How the amendment will assist in the effective administration of the statutes: raise the expectations of program quality.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change. If it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Greater public perception of program goals.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change. If it is an amendment: Not applicable.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.854.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full-year the administrative regulation is to be in effect. None
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? 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 (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.
2. State compliance standards. KRS 158.854.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION CABINET
Kentucky Board of Education
Department of Education

(Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO. KRS 156.070(2)
VOLUME 35, NUMBER 9 – MARCH 1, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates the agent for interscholastic athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education’s agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:
1. Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
2. Sponsor an annual meeting of its member schools;
3. Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
4. Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
5. Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;
6. Advise the Department of Education of all legal action brought against the KHSAA by October 31;
7. Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;
8. Employ an independent evaluation consultant to evaluate that person’s performance annually by October 31, and establish other positions upon recommendation of the commissioner;
9. Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
10. Permit the Board of Control to assess fines on a member school;
11. Utilize a trained independent hearing officer in place of an eligibility committee for an appeal;
12. Establish a philosophical statement of principles to use as a guide in an eligibility case;
13. Conduct field audits of the association’s entire membership over a five (5) year period regarding each school’s compliance with KHSAA; Section 1681 (Title IX); and conduct all meetings in accordance with KRS 61.805 through 61.850; and
14. Provide written reports of any investigations into possible violations of statuto, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:
(a) Draft budget for the next two (2) fiscal years, including the current year;
(b) End-of-year budget status report for the previous fiscal year;
(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
(d) A summary report of operations including summaries of financial, legal, and administrative [summaries-of] actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity and
(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner’s letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The bylaws, tournament rules, and due process procedures, Board of Control policies, membership renewal application, new member application, of the KHSAA Handbook, Fall 2009/2010, September 10, 2009, shall apply to high school interscholastic athletics in Kentucky.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend.
If there is 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 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 31, 2009.
Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Brown
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agency; and to incorporate by reference the bylaws, procedures and rules of the agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative regulation: These amendments make changes to the document incorporated by reference, in the KHSAA Constitution and by KHSAA Bylaws 4, 6, 11, 14, 25, 26 and 32 as adopted by the KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Constitution, Bylaws, and Due Process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input from member schools and districts on changes that need to be made to provide a more sound structure of governance.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 School Districts.

(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: There will be little impact because of the nature of the changes to the regulation.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7.065.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:012. Horses.
RELATES TO: KRS 230.215, EO 2008-668
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings.

Section 1. Registration Required. (1) Except as provided by subsection (2) of this section, a horse shall not be entered or raced in this state unless:

(a) Duly registered and named in the registry office of the Jockey Club in New York; and

(b) The registration certificate or racing permit issued by the Jockey Club for the horse is on file with the racing secretary.

(2) The stewards may for good cause waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) The Jockey Club registration certificate of each horse shall be filed with the horse Identifier within forty-eight (48) hours after the horse's arrival on the association grounds.

Section 2. Ringers Prohibited. (1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with the Jockey Club in New York. If a horse's name is changed by the Jockey Club, the horse's former name shall be shown parenthetically in the daily
race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless the horse has: (a) A legal identity, (b) An electronic horse identification microchip which accurately identifies the horse and is compliant with the international standards ISO 11784.

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that: (a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with the Jockey Club; or (b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 3. Denying. (1) A horse on which a neuroectomy has been performed shall have that fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure that fact is designated on the registration certificate or racing permit.

(2) A horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) A horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neuroectomy (known as low nerved), may be permitted to race if the deserving has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. A person shall not report a horse as having a neuroectomy if in fact the horse has not had a neuroectomy.

Section 4. Bleeders. (1) A horse that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission authority veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the secretary of the commission or his designee who shall make a final decision on the issue.

Section 5. Health Certificate Required. A horse shall not be stabled on association grounds unless within ten (10) days prior to arrival on association grounds, the horse has been examined by an accredited practicing veterinarian who shall certify: (1) The identity of the horse; (2) Temperature when examined; (3) That to the best of his or her knowledge and belief, the horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites; and (4) Any other matters as may be required from time to time by the Kentucky State Veterinarian. Notice of this requirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. A maiden six (6) years of age or older which has made five (5) lifetime time starts on the flat shall not be entered or start.

Section 8. Fillies and Mares Bred. (1) Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare that has been covered by a stallion shall be entered in a claiming race, unless a written release from the stallion owner is attached to the filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9. Serviceable for Racing. A horse shall not be entered or raced that: (1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list, or is suspended, in any racing jurisdiction;

(3) Has been administered any drug in violation of 810 KAR 1-018;

(4) Is blind or has seriously impaired vision;

(5) Is not correctly identified to the satisfaction of the stewards; or

(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Whips and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse in its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle may weigh no more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles shall not be used.

(7) A horse shall not race in ordinary training shoes.

(8) Bar shoes may be used for racing only with permission of the stewards.

(9) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for an ordinary whip, which may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(10)(a) All riding crops are subject to inspection and approval by the stewards and the clerk of the scales.

(b) Only riding crops meeting the specifications set out below, including the mandatory shock absorbing characteristic, shall be allowed in thoroughbred racing including training:

1. Maximum weight of eight (8) oz.
2. Maximum length, including loop, of thirty (30) inches.
3. Minimum diameter of the shaft of one-half (1/2) inch.
4. The only additional feature that may be attached to the riding crop is a flap, which shall fall within the specifications below:

(a) A maximum length of flap from the end of the shaft of one-half (1/2) inch;
(b) A maximum width of the flap of one and six-tenths (1.6) inches, with a minimum width of eight tenths (0.8) inch;
3. The flap from the end of the shaft must not contain any reinforcements of additions;
4. There shall be no binding within seven (7) inches of the end of the flap;
5. The contact area of the shaft must be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference;
6. The flap must have similar shock absorbing characteristics to that of the contact area.
(d) No stingers or projections extending through the hole of a popper or any metal part on a whoa shall be permitted. [A whoa shall not be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper.
(b) A stinger or projection extending through the hole of a popper or any metal part of the whoa shall not be used.
(e) An ordinary whip shall not be used indiscriminately or brutally, as determined by the stewards]
(11) (a) The following shall not be used on the front shoes of thoroughbred horses while racing or training on all racing surfaces:
1. Horse shoes (racing plates) which have toe grabs;
2. Bends;
3. Jar calls;
4. Stickers; and
5. Any other traction device worn on the front shoes of thoroughbred horses.
(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of thoroughbred horses while racing or training.

Section 11. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary promptly. The racing secretary shall note any alteration in the sex of a horse on the horse's registration certificate.

Section 12. Postmortem Examination. Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky at the discretion of the commission steward and the commission veterinarian.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: February 12, 2009
FILED WITH LRC: February 13, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2009 at 10 am, at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by March 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 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 31, 2009. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: John Forgy
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of horses in horse racing.
(b) The necessity of this administrative regulation: The regulation is necessary to protect the health and safety of horses.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning the care and equipment of thoroughbred racing horses.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation gives detailed guidance as to what practices and equipment can and cannot be utilized in with regard to thoroughbred racing horses.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(1) How the amendment will change this existing administrative regulation: The amendment provides more detailed provisions concerning the physical size and weight specifications of riding crops.
(2) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that riding crops are constructed and used in a manner consistent with the well-being of thoroughbred horses racing in Kentucky.
(3) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing. This amendment addresses an important issue concerning horse safety, the use of riding crops.
(4) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of thoroughbred horses racing in Kentucky.
(5) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys engaged in thoroughbred racing who are licensed by the Kentucky Horse Racing Commission. The jockeys will be required to comply with the new riding crop rules.
(6) Provide an analysis of how the entities identified in question (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: Jockeys and companies manufacturing riding crops will be required to conform to the new requirements.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The welfare of racing horses will be enhanced by ensuring that riding crops are constructed and used in a safe manner.
(7) 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.
(8) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(9) Provide an assessment of whether an 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 this administrative regulation.
(10) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish or increase any fees.
(11) Tiering: Is tiering applied? No tiering is applied. The rules concerning riding crops apply equally to all participants in horse racing.

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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)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No. Government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

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

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

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

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

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

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

Other Explanation:

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

810 KAR 1:06. Running of the race.

STATUTORY AUTHORITY: KRS 230.260(3)(Chapter 13A)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) grants the Kentucky Horse Racing Commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. EO 2008-688, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Commission to the Commission. This administrative regulation sets forth the standards and requirements governing the running of a horse race [To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation outlines the requirements relating to the running of a race.]

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission[authority]. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, a[ne] race shall not be started after 11:55 p.m.

Section 2. Horses in Paddock Not to be Touched. A[No] person shall not touch a horse while in the paddock except for its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outsider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of the horse. If a trainer is to be absent from a track where his horses are participating in races, he shall provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. All[Every] horse whose starting is obligatory shall run the course[is] except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable shall be weighed out, the horse or horses of single ownership shall be ridden past the stewards’ stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting point. The parade shall follow the stewards’ stand. After passing the stewards’ stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, the jockey shall remount at the point at which thrown. If the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. When, by permission of the paddock judge, a horse is led to the post by a pony, the horse may be excused from parading with the other horses. The horse shall run on or off the post, pass the stewards’ stand. Lead ponies may be excluded from the paddock enclosure or walking ring, at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started. If an injury occurs to any jockey or his equipment, the starter may grant a delay to permit the substitution of a jockey or repair of equipment. During the delay, the starter may permit any jockey to dismount. If a horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate, and the horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate. The starter shall then reload the horses in their proper order where the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. No person other than the jockey, starter, or assistant starter shall be permitted to strike a horse or attempt, by shouting or other means [fashion], to assist the horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the authority shall be used in starting all races on the flat except in cases permitted by the stewards. If a race is started without a starting gate, there shall be no start until, and no recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a horse at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse inadvertently has not been loaded in its scheduled position in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutual tickets. After consulting with the starter and viewing the patrol films or video tape, the stewards shall then determine whether the horse was precluded from obtaining a fair start.
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(2) If the stewards find the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon, unless [except if] the horse ruled a nonstarter is part of a mutuel entry and another horse in the entry is not left at the post, in which case there shall be no pari-mutuel refund.

(3) Stakes fees for the ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length beyond the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall be no refund of pari-mutuel wagers on the horse[thereon] nor refund of stakes fees paid for the horse[thereon].

Section 11. Horses Failing to Finish. Any horse which starts in a race[,] but does not cross the finish line, or which is not ridden across the finish line by the jockey with whom it starts the race, shall be declared unplaced. Any portion of the purse that may normally accrue to the horse shall revert to the association.

Section 12. Foul. A leading horse when clear is entitled to any part of the track. If a leading horse or any other horse in a race[.] swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this act[act(s)] shall be deemed a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards[,] a foul alters the finish of a race, any offending horses may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. A[An]y jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged. If in the opinion of the stewards[,] a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to Be Ridden Out. Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. A[An]y horse shall not be eased up without adequate cause, even if it has no apparent reason to do so. A horse’s effort may be penalized at the discretion of the stewards. Stewards shall take cognizance of any marked reversal of form of a horse[all horses] and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse[on behalf of the horse] if the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Riding Crops. (1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exercising his or her best efforts to win.

(2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

(3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards, shall not be possessed by anyone, or applied by anyone, to a horse at any time, on the ground of the association during a race meeting, whether during a race or otherwise.

(4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.

(5) A riding crop shall only be used for safety, correction, and encouragement.

(6) A rider who uses a riding crop shall:

(a) Show the horse the riding crop and give the horse time to respond before striking the horse;

(b) Having used the riding crop, give the horse a chance to respond before using it again;

(c) Use the riding crop in rhythm with the horse’s stride;

(d) Prohibited use of the riding crop includes striking a horse:

(a) On the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;

(b) During the post parade or after the finish of the race except when necessary to control the horse;

(c) Excessively or brutally;

(d) Causing welts or breaks in the skin;

(e) When the horse is clearly out of the race or has obtained its maximum placing;

(f) Persistently even though the horse is showing no response under the riding crop, or

(g) Another person;

(h) After the race, a horse shall be subject to inspection by a racing or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

(9) The giving of instructions by any licensee that it obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions. Where: (1) A jockey will not ride with a whip in a race, an announcement shall be made over the public address system of the fact.

(2) The use of a whip shall not be required. A jockey who uses a whip during a race shall be prohibited from whipping a horse:

(a) On the head, flanks, or on any part of its body other than the shoulders or hind quarters;

(b) During the post parade except when necessary to control the horse;

(c) Excessively or brutally causing welts or breaks in the skin;

(d) When the horse is clearly out of the race or has obtained its maximum placing;

(e) Persistently even though the horse is showing no response under the whip;

(f) Correct use of the whip shall be:

(a) Showing horses the whip before hitting them;

(b) Using the whip in rhythm with the horse’s stride;

(c) Using the whip as an aid to keep a horse running straight.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance[No appliance, electrical or mechanical, other than[.], ordinary whip, shall not be used to affect the speed of a horse in a race or workout. A[An]y sponge or other object may not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment[therein] shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and administrative regulations of the commission[authority], the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall be taken or order altered official order of finish for the purposes of pari-mutuel wagering.
heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by March 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 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, 31, 2009. Please send written notification of Intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of horses in horse racing
   (b) The necessity of this administrative regulation: The regulation is necessary to protect the health and safety of horses.
   (c) How this administrative regulation conforms to the content of the authorizing statute: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning the running of thoroughbred horse races.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The regulation gives detailed guidance as to what practices and equipment can and cannot be utilized in regard to thoroughbred racing horses.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
       (a) How the amendment will change this existing administrative regulation: The amendment provides more detailed restrictions on the excessive use of riding crops by jockeys.
       (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that riding crops are used in a manner consistent with the well-being of thoroughbred horses racing in Kentucky.
       (c) How the amendment conforms to the content of the authorizing statute: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing. This amendment addresses an important issue concerning horse safety, the use of riding crops.
       (d) How the amendment will assist in the effective administration of the statute: The amendment will further the goal of securing the safety and welfare of thoroughbred horses racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys engaged in thoroughbred racing who are licensed by the Kentucky Horse Racing Commission. The jockeys will be required to comply with the new riding crop rules.

(4) Provide an analysis of how the entities identified in question (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: Jockeys and companies manufacturing riding crops will be required to conform to the new requirements.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The welfare of racing horses will be enhanced by ensuring that riding crops are constructed and used in a safe manner.
   (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: N/A
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.
   (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish or increase any fees.
   (9) TIERING: Is tiering applied? No tiering is applied. The rules concerning riding crops apply equally to all participants in horse racing.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? None
   (d) How much will it cost to administer this program for subsequent years? None

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

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

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


NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate
administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.770(1) establishes the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. KRS 230.770(5) and (6) authorize the Authority to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, classes, and quality of the races. EO 2006-68, effective July 3, 2006, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Final" means the race following a series of preliminary, stake, or juvenile stake race held to determine the divisional champion of each racing division of the Sires Stakes Program.
(2) "Kentucky Sires Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year-old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within Kentucky at the time of conception and bred and owned by residents of Kentucky.
(3) "Kentucky Standardbred Development Fund" means the trust and revolving fund as set out in KRS 230.770.
(4) "KSDF" means the Kentucky Standardbred Development Fund.

Section 2. (1)(a)(a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Kentucky Standardbred Development Fund shall register the stallion by July 1 of the breeding season with the Kentucky Horse Racing Commission.
(2) A standardbred stallion that has never sired a foal shall be registered in any breeding season prior to his first breeding.
(3) A stallion shall be registered on the Standardbred Stallion Certificate, KHRSA 300-2 (3/09).
(4) A stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.

Section 3. Initial Registration Fees. (1) The following initial registration fees shall be paid:
(a) The sire registration fee for a stallion with an annual book of twenty-five (25) or more mares shall be one (1) full advertised stud fee;
(b) The sire registration fee for a stallion with an annual book of twenty-four (24) mares or less shall be twenty (20) percent of the advertised stud fee or a minimum of $200; and
(c) The registration fee for a stallion standing at Private Treaty shall be the average stud fee charged for all cash breeding agreements for the breeding season.
(2) The annual stallion registration fee shall follow the gait of the stallion.
(3) Stallion fees shall be due on or before October 1 of the year nominated to the KSDF.
(4) If a stallion was nominated to the KSDF, the stallion fee shall be paid on or before the October 1 deadline regardless of whether mares are bred to the nominated stallion.
(5) At the end of a breeding season, the owner or lessee of a stallion standing at Private Treaty shall submit to the Commission a list of mares bred and prices charged.

Section 4. Registration Renewal Fees. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.
(2) The "Standardbred Stallion Certification of Eligibility Renewal", (12/06) form shall be filed by July 1 of the breeding season.
(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:
(a) One (1) full advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and
(b) Twenty (20) percent of the stud fee or a minimum of $200 for a stallion with an annual book of twenty-four (24) or less mares.
(4) The annual stallion renewal fee shall follow the gait of the stallion.
(5) Stallion fees shall be due on or before October 1 of the year the renewal form is filed.
(6) If a stallion was nominated to the KSDF, the renewal fee shall be paid on or before the October 1 deadline regardless of whether mares were bred to the nominated stallion.

Section 5. An owner, lessee, stallion manager or syndicate manager of a standardbred stallion registered with the Commission shall, by October 1 of each calendar year, submit the stallion registration fee, as set forth in Sections 3 and 4 of this administrative regulation, and a report of each stallion, listing the mares bred by each stallion during the preceding twelve (12) months.

Section 6. (1) In order to qualify for the Kentucky Sires Stakes, a foal shall be the product of the mating of a mare with a Kentucky registered and resident stallion.
(2) Foals, other than the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo transfer or other means, shall not be eligible for harness racing in Kentucky.
(3) This rule shall not apply to natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.
(4) Any future offspring of foals ineligible for racing under this section shall not be eligible for harness racing in Kentucky.

Section 7. (1) If the Commission [Authority] determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, or that an owner, lessee, stallion manager, or syndicate manager of a registered stallion fails to furnish information, the Commission [Authority] has requested relating to the registration or renewal of a stallion, the Commission [Authority] shall:
(a) Temporarily suspend or deny the registration of the stallion; and
(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the Commission [Authority] at a hearing pursuant to 811 KAR 1:105.
(2) After the hearing, the Commission [Authority] shall determine whether the violation was willful.
(a) If the Commission [Authority] finds the violation was willful, the Commission [Authority] shall do one (1) or more of the following, based on the degree of seriousness of the willful violation:
1. Officially deny the registration;
2. Officially suspend the registration;
3. Officially revoke the registration; or
4. Bar the owner, lessee, stallion manager, or syndicate manager who willfully committed the violation from further registering stallions to the KSDF.
(b) If the Commission [Authority] finds the violation was not willful, the Commission [Authority] shall rescind the temporary suspension or denial of the registration.
(3) If a person summoned by the Commission [Authority] fails to respond to the summons, the Commission [Authority] shall:
(a) Shall suspend or deny the registration of the stallion;
(b) Shall notify the person in writing of the action taken by the Authority; and
(c) May bar the owner, lessee, stallion manager or syndicate manager who committed the violation from further registering stallions to the KSDF Program, based on the degree of seriousness of the violation.

Section 8. An owner, lessee, stallion manager or syndicate manager of a stallion eligible for the Kentucky Standardbred Development Fund shall be responsible for:
(1) The registrations and records of the farm; and
(2) Complying with the requirements of the Kentucky Standardbred Development Fund.
Section 9. (1) An owner, lessee, stallion manager or syndicate manager of a stallion used for breeding purposes to produce horses eligible for racing in Kentucky may only issue one (1) mating certificate required to register the first born foal produced by a mare in each calendar year, except for natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.

(2) If it has been determined that an owner, lessee, stallion manager or syndicate manager of the stallion has issued a mating certificate for a foal other than the first born to a mare (donor or recipient), all foals produced by the mare (donor or recipient) in the applicable calendar year shall be ineligible for racing in Kentucky.

Section 10. The Standardbred Authorized Agent Form, KHRA 300-3 shall be filed with the stallion registration.

Section 11. Kentucky Sires Stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund, the requirements for which are established in Sections 12 through 33 of this administrative regulation, shall be subject to the provisions of 811 KAR Chapter 1.

Section 12. A participant in the Kentucky Sires Stakes race shall:

(1) Be the product of the mating of a mare with a Kentucky registered and resident stallion; and

(2) Maintain eligibility for the Kentucky Standardbred Development Fund.

Section 13. Each race shall be a one (1) mile dash.

Section 14. Post positions for the final and all preliminary legs shall be an open draw with two (2) "also eligibles" drawn for the final race.

Section 15. Eligibility for the Final. (1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final, shall be declared at the host track where the race is being held or on before the time posted on the track condition sheet.

(5)(a) If the number of horses eligible and declared into any final event exceeds the maximum number specified by the Kentucky Standardbred Development Fund or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

   1. 1st place - fifty (50) points;
   2. 2nd place - twenty-five (25) points;
   3. 3rd place - twelve (12) points;
   4. 4th place - eight (8) points;
   5. 5th place - five (5) points;
   6. 6th place and all other starters - one (1) point; and

   7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(c) If a horse is qualified for the final and is not declared, the horse with the next highest point total, pursuant to subsection (5) of this section, that is declared shall be eligible for the final.

(6) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (5) of this section, that are declared into the final, but do not qualify for the final, shall be designated "also eligibles". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final as a replacement after the official scratch time deadline that is in effect at the host track.

Section 16. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 17. All starters shall be subject to the detention policy of the racetrack.

Section 18. (1) There shall not be more than:

(a) Ten (10) starters in each final race on a mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 19. (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of $500 ($1,000). If a preliminary leg splits into two or more divisions, the declaration fee shall be $500 per division. For each horse declared to race in the final, there shall be a declaration fee of one (1) percent of the total purse ($20,000).

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the Kentucky Standardbred Development Fund shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c) Stallion fees;

(d) Declaration fees; and

(e) Added money from the Commonwealth of Kentucky.

(4) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than December 15 [August–16] of each calendar year, by an advisory panel consisting of at least one (1) representative from each of the following:

1. The Kentucky Horse Racing Commission [Authority];

2. The Kentucky Harness Horseman's Association;

3. The host racetrack;

4. The Kentucky Standardbred Breeders Association and any other recognized standardbred breeding association organized in Kentucky; and

5. The owner of a stallion registered to the Kentucky Standardbred Development Fund.

(b) The final determination regarding distribution of revenue shall be made by the Kentucky Horse Racing Commission [Authority].

Section 20. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.
4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.
7. If the need exists for seven (7) or more divisions eliminations, eligibility to the final shall be determined in a manner consistent with the published conditions.

(b) One-half (1/2) and five-eighths (5/8) mile track:
1. Nine (9) to ten (10) horses entered - one (1) division.
2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.
7. If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 21. (1) Gait shall be specified by the owner of the horse, by the first two (2) year old payment.

(a) Change of gait:
(a) May be made at the time of declaration at the track; and
(b) Sustaining payments shall remain in the funds of the original gait specified.
(3) A horse shall not race on both garts in the same year.

Section 22. A race shall be raced in separate divisions as follows:
(1) Colt/gelding/ridgeling divisions; and
(2) Filly divisions.

Section 23. (1) The purses awarded for all races shall be distributed on the following percentage basis:
(a) 50-25-12-8-5: five (5) starters or more;
(b) 50-25-15-10: four (4) starters;
(c) 60-30-10: three (3) starters;
(d) 65-35: two (2) starters; and
(e) 100: one (1) starter.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky part-mutuel tracks.

Section 24. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 30 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the Kentucky Standardbred Development Fund shall be disbursed by August 15 of each calendar year in accordance with the formula created by the panel as set out in Section 19(4) of this administrative regulation.

Section 25. Starters shall declare in at each track on or before the time specified and advertised by the association conducting the event.

Section 26. (1) Any horse declared into Kentucky Sires Stakes races shall:
(a) Show at least one (1) charted race line with no breaks within thirty (30) days prior to the day of the race; and
(b) Have satisfied the following time requirements:
1. On a track longer than five-eighths (5/8) of a mile:
a. A two (2) year old trotter shall have been timed in 2:08 or faster;
b. A two (2) year old pacer shall have been timed in 2:06 or faster;

(c) A three (3) year old trotter shall have been timed in 2:04 or faster;
d. A three (3) year old pacer shall have been timed in 2:02 or faster.
2. On a five-eighths (5/8) mile track:
(a) A two (2) year old trotter shall have been timed in 2:09 or faster;
(b) A two (2) year old pacer shall have been timed in 2:07 or faster;
c. A three (3) year old trotter shall have been timed in 2:05 or faster;
d. A three (3) year old pacer shall have been timed in 2:03 or faster.
3. On a one-half (1/2) mile track:
(a) A two (2) year old trotter shall have been timed in 2:10 or faster;
b. A two (2) year old pacer shall have been timed in 2:08 or faster;
c. A three (3) year old trotter shall have been timed in 2:06 or faster;
d. A three (3) year old pacer shall have been timed in 2:04 or faster.

(2) A horse shall be scratched from the race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 27. (1) At a scheduled meeting of the Commission[Authority], the Commission[Authority]:
(a) Shall establish the distribution of funds for stakes races for the upcoming year; and
(b) Shall authorize expenditures at a time it designates.
(2) The racing dates for KSDF stakes shall be issued after the track has established its race dates.

Section 28. The Kentucky Standardbred Development Fund shall provide a trophy for each event which will be paid out of KSDF funds.

Section 29. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The Kentucky Sires Stakes Nomination Form, KHRA 300-1 shall be filed with the Commission[Authority] along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF as a three (3) year old.

Section 30. Nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund in U.S. funds.

Section 31. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.
(2) The nomination fee shall be forty (40) dollars per yearling.
(3) A nomination shall be accompanied by a photocopy of the United States Trotting Association or Standardbred Canada registration certificate.
(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year:
(a) A supplemental payment of $500 is made by March 15 of the two (2) year old year; and
(b) The two (2) year old payment due by March 15, as provided in subsection (5)(a) of this section, is also made.

(5) Sustaining payments shall be as follows:

<table>
<thead>
<tr>
<th>(a) TWO (2) YEAR OLD PAYMENTS</th>
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<tbody>
<tr>
<td>March 15</td>
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<tr>
<td>April 15</td>
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<tr>
<td>May 15</td>
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</tbody>
</table>

March 15 payment shall be mandatory to make entry eligible as a three (3) year old.
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<table>
<thead>
<tr>
<th>(b) THREE (3) YEAR OLD PAYMENTS</th>
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<tbody>
<tr>
<td>February 15</td>
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<tr>
<td>March 15</td>
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<tr>
<td>April 15</td>
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</tbody>
</table>

Section 32. The Commission [Authority], during any given year, may provide for separate early closing events for both two (2) and three (3) year old standardbreds that are Kentucky sired.

Section 33. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Kentucky Sire Stakes Nomination Form KHRA 300-1", (8.06);
(b) "Standardbred Stallion Certificata, KHRA 300-2", (8.06);
(c) "Standardbred Authorization Agent Form, KHRA 300-3", (8.06); and
(d) "Standardbred Stallion Certification of Eligibility Renewal 300-4", (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 be obtained from the KHRA Web site at www.khra.ky.gov.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 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 Kentucky Horse Racing Commission in writing by March 17, 2009 five working days prior to the hearing, of their Intent to attend. If no notification of intention to attend the hearing is received by that date, then 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 31, 2009. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2046, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the rules and procedures of the Kentucky Standardbred Development Fund (KSDF), which provides money for the Kentucky Sire Stakes races held at the Red Mile.
(b) The necessity of this administrative regulation: The regulation is necessary to provide detailed guidance for the administration of the KSDF, including eligibility requirements and the manner of distributing incentive money.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.770 creates the KSDF and requires the Kentucky Horse Racing Commission to promulgate regulations governing the administration of the fund. 811 KAR 1:225 is the regulation that the Commission has promulgated to administer the fund.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The regulation gives detailed guidance concerning eligibility for KSDF incentives and the rules for qualifying for an award. (2) If 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 reduces fees to enter preliminary legs of the Sire Stakes races from $1,000 to $500, while changing the fees for the finals from $2,000 to an amount equal to 1% of the total purse. Additionally, the deadline before which the KSDF advisory panel must meet to review the distribution of revenue under the fund has been changed from August 15th to December 15th.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make the regulation conform to the agreement reached by the members of the harness racing industry concerning purse reductions and entry fees.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.770 creates the KSDF and requires the Kentucky Horse Racing Commission to promulgate regulations governing the administration of the fund. 811 KAR 1:225 is the regulation that the Commission has promulgated to administer the fund. This amendment makes a change to the entry requirement.
(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in administering the KSDF in conformity with the desires of the regulated harness racing community.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those horse owners desiring to participate in the Sire Stakes races will be affected by the alteration of entry fees. In standardized racing in recent years, the KHRC has licensed approximately 2000 owners in various categories.
(4) Provide an analysis of how the entities identified in question (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 an amendment thereto: This regulation alters the declaration fees for entering the Kentucky Sire Stakes races. Horse owners will comply by paying the appropriate fee.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Due to a reduction in the dollar amount of purses available under the KSDF for the Sire Stakes races, declaration fees (entry fees) for preliminary races (preliminary "legs") are being reduced, from the current $1,000 to $500. It would not make economic sense for many horse owners to enter a race for a reduced purse that still requires a large entry fee; therefore it is appropriate to reduce the declaration fees as well. However, the declaration fees for the finals will remain at $2,000 to 1% of the total purse (which will mean approximately $3,000, because the winning purse for the final is usually $300,000). Representatives of the Kentucky harness racing industry have met and agreed to these changes; no opposition to this amendment is anticipated. Additionally, the deadline for the KSDF advisory panel has been changed from August 15th to December 15th. The panel would prefer to meet after each year's Sire Stakes races take place in September, rather than before.
(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: N/A.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees for entry into the preliminary leg of the Kentucky Sire Stakes Races will be reduced, and fees to the final will be increased somewhat. The regulated standardbred community has been consulted and agrees to the changes. See paragraph 4(c) above.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: See paragraph 4(c) above.
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(9) TIERING: Is tiering applied? No tiering is applied. The regulation affects all who receive benefits from the KSOF 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? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
   (c) How much will it cost to administer this program for the first year? None.
   (d) How much will it cost to administer this program for subsequent years? None
   Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (+/-):
   Expenditures (+/-):
   Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Building Code Enforcement
(Amendment)


RELATES TO: KRS 227.450, 227.489
STATUTORY AUTHORITY: KRS 227.489
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the Commissioner of the Department of Housing, Buildings, and Construction to certify electrical inspectors based on standards of the National Electrical Code. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction, and established the Commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.
(2) "Authority having jurisdiction" means the Department of Housing, Buildings, and Construction.
(3) "Certified electrical inspector" means a person who has:
   (a) Met the requirements established in this administrative regulation; and
   (b) Received a certificate of compliance.
(4) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.
(5) "Electrical Code" is defined by KRS 227.450(3).
(6) "Electrical industry" means the industry engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.
(7) "Employee" means a person who is employed on a full-time, part-time, or contractual basis.
(8) "Executive director" means the Commissioner of the Department of Housing, Buildings, and Construction.
(9) "Department Office" means the Department Office of Housing, Buildings, and Construction.
(10) "NCPCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.
(11) "Temporary certification" means a certificate issued by the department office under the provisions of Section 4 of this administrative regulation which is valid for a limited period of time.

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant for certification as an electrical inspector.

Section 3. Categories of Certified Electrical Inspectors. A certified electrical inspector shall be classified as an electrical inspector one (1) and two (2) family or an electrical inspector general:
(1) An electrical inspector one (1) and two (2) family shall:
   (a) Be a person who has passed the NCPCI IA examination; and
   (b) Be qualified to perform an electrical inspection and approve an electrical installation related to:
       1. One (1) or two (2) family dwelling; or
       2. Manufactured or mobile home.
(2) An electrical inspector general shall:
   (a) Be a person who has passed the NCPCI IA examination; and
   (b) Be qualified to inspect and approve all types of residential, commercial, industrial, or other property which requires electrical inspection.

Section 4. Applications Requirements for Temporary Certification. (1) Before an applicant may sit for the examination for temporary certification as an electrical inspector, the applicant shall:
   (a) Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:
       a. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or
       b. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general; or
   (b) Possess:
       1. The ability to read and write the English language; and
       2. A general educational level satisfactory to perform his duties;
   (c) Submit a completed Form SFM-EL-1, Application for Electrical Inspectors, which shall be:
       1. Notarized; and
       2. Received by the department office at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and
   (d) Submit with the application:
1. A written statement of need for certification from the local official responsible for the electrical or building inspection program; and

2. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(e) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Department[Office] of Housing, Buildings, and Construction with recommendations from the Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) An applicant shall receive credit earned for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(4) The Electrical Advisory Committee shall review an applicant for temporary certification to determine his eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the Department[Office] of Housing, Buildings and Construction, the applicant shall pass the office's written examination for the class of temporary certification.

(2) An examination shall be:

(a) Administered within thirty (30) days after acceptance by the Department[Office] of Housing, Buildings and Construction at the office's office in Frankfort, Kentucky, unless another location is specifically designated; and

(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.

(3) A grade of seventy-five (75) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of fifty (50) dollars.

(4) An applicant shall not retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:

(a) Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code;

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspectors, which shall be:

1. Notarized; and

2. Received by the office at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

3. Submit with the application:

1. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer; and

2. Proof of successful completion of the NCPCCI examination for:

a. Electrical inspector general; or

b. Electrical inspector one (1) and two (2) family.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Department[Office] of Housing, Buildings, and Construction with recommendations from the Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) Following the review and approval of an applicant's qualifications and examination results by the electrical advisory committee, the department[office] shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 of this administrative regulation.

(4) A fully-certified inspector shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:

(a) Be issued to an individual; and

(b) Not be issued to a corporation, partnership, company, or other entity.

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A.

(3) Each electrical inspector certification, except a temporary certificate, shall expire on the last day of the inspector's birth month each year. The department[office] shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the provisions of this administrative regulation.

(4) A renewal fee of fifty (50) dollars shall be paid by each certified electrical inspector before the last day of the inspector's birth month in each succeeding year to maintain certification.

(5) Delinquent renewal fee. A certified electrical inspector who fails to submit the application for renewal on or before the last day of his or her birth month shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed 180 days after the last day of the inspector's birth month, the certificate shall be canceled and shall not be renewed.

(6) Reinstatement. A certificate that has been revoked or canceled may be reinstated upon petition to the executive director for good reason.

(7) An applicant for reinstatement shall pay a reinstatement fee of $100 and shall:

(a) Pay the delinquent renewal fees; and

2. Submit proof of continuing education for each year the certificate was revoked or cancelled; or

(b) Pass the NCPCCI examination within the current year.

Section 8. Temporary Emergency Certifications. (1) Whenever an emergency exists in the Commonwealth due to a disaster or an act of God, and the number of persons in the Commonwealth holding certifications as electrical inspectors is insufficient to cope with the emergency, licensed/certified inspectors from out-of-state may work in the Commonwealth for a period of forty-five (45) days by providing the following information:

(a) Proof of electrical inspection certification/license and

(b) Proof of $5,000 dollar bond as required by KRS 227.497(4).

(2) This information must be provided to the local authority having jurisdiction or the utility company before electrical services are re-connected.

Section 9. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the Department[Office] of Housing, Buildings, and Construction with advice from the Electrical Advisory Committee.
(2) Each electrical inspection shall be made in compliance with the edition of the National Electrical Code, which is incorporated by reference in 615 KAR 7:120 as part of the Kentucky Building Code.

(3) In addition to the National Electrical Code, the electrical inspector shall be familiar with the applicable building codes or fire safety codes governing buildings in the area in which the inspector performs an inspector to determine the occupancy load of a facility.

(4) The electrical Inspector shall make an inspection upon request of the electrical contractor.

(5)(a) Temporary construction service approvals shall receive a green sticker and a certificate of compliance.

(b) For an installation subject to KHS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of compliance.

(5) Except for manufactured homes, the electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(e) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or other appropriate location.

(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(c) Upon final approval of an electrical installation, the Inspector shall:

1. Attach a green sticker to the main service equipment;

2. With his signature and certification number, name of the project and location; and

3. State that the system has been inspected for compliance with the National Electrical Code; and

2. Provide the owner or the owner's agent with a certificate of compliance. For an installation subject to KHS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of compliance.

(7) A red, yellow or green sticker or a certificate of compliance to be used by the electrical inspector shall be issued or approved by the Code.

(8) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection and make them available to the office upon request. The record shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of a required permit and the agency granting the permit;

(e) The size and complexity of the structure; and

(f) Deficiencies in meeting code requirements and the action required to comply.

(9) Violation of KRS 211.350(4) by a certified electrical Inspector shall constitute misconduct.

Section 10.[49] Complaints and Grievance Procedures. (1) A person may file a complaint against a certified electrical inspector if the person believes that an act or omission of the inspector in the performance of his duties caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the executive director and shall:

(a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and

(b) Specify the action requested of the commission[executive director].

(3) Following an investigation, the commission[executive director] shall:

(a) Cause the matter to be heard and a recommendation rendered by the Electrical Advisory Committee;

(b) Set the matter for public hearing; or

(c) Take other appropriate action to resolve or correct the matter.

Section 11.[16] Suspension and Revocation of Certification. The commission[executive director] shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the executive director after a KRS Chapter 13B administrative hearing, to have:

1. Engaged in an activity which constitutes a conflict of interest, including:

(a) Work as an electrical contractor or electrician;

(b) Involvement in an activity in the electrical industry; or

(c) Having a pecuniary or substantial interest;

2. Engaged in fraud, deceit or misrepresentation in obtaining certification;

3. Been guilty of negligence, incompetence or misconduct as established by this administrative regulation in the field of electrical inspection;

4. Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to his inspection if he has not personally inspected the installation and found it to be satisfactory in accordance with the code;

5. Operated as an electrical inspector in a locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations;

6. Knowingly overlooked the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or

7. Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 12.[44] Electrical Inspections by State Employed Certified Electrical Inspectors. (1) State-owned property including each building being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state employed certified electrical inspector shall inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) A state employed certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review under the Kentucky Building Code.

(4) A state employed certified electrical inspector may inspect a state leased facility, upon request.

Section 13.[13] Interpretations. If a provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department[Office] of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the office shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction.

Section 14.[43] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EL-1, "Application for Electrical Inspectors, May, 2001", Office for Housing, Buildings and Construction;

(b) Form SFM-EL-1A, "Renewal Application for Electrical Inspector Certification, May, 2001", Office for Housing, Buildings and Construction;
(c) Form FHPS-001, "Notice of Release for Temporary Electrical Service", (May 1998 Edition), Department for Public Health; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing and Urban Development, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. VANCE, Secretary
RICHARD MOLONEY, Commissioner
APPROVED BY AGENCY: February 8, 2009
FILED WITH LRC: February 9, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2009, at 9 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext. 144, fax (502) 573-1037.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for certification of electrical inspectors during emergency or disaster conditions within the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt a procedure by which out-of-state licensed/certified electrical inspectors who wish to assist during disaster relief are to report to either the local utility company awaiting inspection prior to returning electrical power to a structure or the local authority having jurisdiction. Out-of-state electrical inspectors are to provide proof of license/certification and proof of bond.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require electrical inspectors to be certified in the Commonwealth. For a property to have power activated by the utility company, it must first be inspected by a certified electrical inspector. This regulation allows for the continuation of electrical inspectors under normal circumstances and provides for out-of-state inspectors to assist following times of disaster in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides and emergency provision which will ensure that the citizens of the Commonwealth can regain electrical services as quickly as possible following an emergency or disaster.

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

(a) How the amendment will change this existing administrative regulation: The amendment will expand the existing administrative regulation and provides emergency assistance with regards to the re-connection of electrical services following disasters and acts of God.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expedite the return of electricity to properties throughout the Commonwealth following natural disasters and emergencies.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires that all electrical inspectors who work in the state be certified. This amendment expands that requirement, giving reciprocity to reporting out-of-state electrical inspectors in emergency and disaster relief situations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a mechanism for better serving the citizens of the Commonwealth following a disaster or emergency situation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any property that is subject to an electrical inspection prior to electrical services being restored following a natural disaster or emergency situation. Exact numbers are not available.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Out-of-state licensed/certified electrical inspectors who wish to assist during disaster relief are to report to either the local utility company awaiting inspection prior to returning electrical power to a structure or the local authority having jurisdiction. Out-of-state electrical inspectors are to provide proof of license/certification and proof of bond.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to out-of-state inspectors is work which otherwise would not be allowed under current Kentucky law. The benefit to citizens of the Commonwealth is that electrical power will be restored to residences and structures quicker as inspections can be completed in an expedited manner.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipated need for fees or funding to implement this amendment of administrative regulation.

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

(9) TIERING: Is tiering applied? N/A. Tiering was not used. All out-of-state inspectors coming in to assist following an emergency will be affected in the same manner. Differences as to size of business, location, etcetera, do not come into play in this context.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What 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 minimal impact would be to the local utilities and/or local authority having jurisdiction in that such will be checking to be certain that out-of-state electrical inspectors meet the requirements set forth in the 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? N/A

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Local utilities and/or local authority having jurisdiction in that such will be checking to be certain that out-of-state electrical inspectors meet the requirements set forth in the regulation. For this reason, there is anticipated to be minimal or no fiscal impact from this regulation.

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

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


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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-care facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-care facility operated by a local governmental unit or private organization willing to receive the child upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(23).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;

2. Placement;

3. Performance measurement; and

4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following:

(a) DPP-886, Private Child Care Client Inter-agency Referral Form;

(b) DPP-886A, Application for Referral and Needs Assessment; and

(c) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or

2. Child Behavior Checklist For Ages 6-18; (Achenbach)

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-care facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2)(a) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a
needs assessment consistent with one (1) of the five (5) levels of care; and
(b) Return the completed DPP-886, Private Child Care Client Inter-agency Referral Form, to the department;
(3) Reassess a child utilization review:
(a) Six (6) months from the initial placement or reassignment
and placement in a child-caring facility and child-placing agency; and
(b) 1. Every three (3) months thereafter if the child is in a private
child care residential placement; or
2. Every six (6) months thereafter if the child is in a foster care
placement or therapeutic foster care;
(4) Reassign a child's level of care after the previous level has expired;
(5) Monitor each child-caring facility and child-placing agency;
and
(6) Maintain a confidential information system for each child
served that shall include:
(a) Placement history;
(b) Level of care assignments;
(c) Length of treatment; and
(d) Discharge outcomes.

Section 4. Levels of Care. A level of care shall be assigned in
accordance with the following standards:
(1) A Level I child requires a routine home environment that:
(a) Provides maintenance;
(b) Provides guidance;
(c) Provides supervision to meet the needs of the child; and
(d) Ensures the emotional and physical well-being of the child.
(2) A Level II child:
(a) May engage in nonviolent antisocial acts, but be capable of
meaningful interpersonal relationships; and
(b) Requires supervision in a structured supportive setting with:
1. Counseling available from professional or paraprofessional
staff;
2. Educational support; and
3. Services designed to improve development of normalized
social skills.
(3) A Level III child:
(a) May engage in an occasional violent act;
(b) May have superficial or fragile interpersonal relationships;
(c) Requires supervision in a structured, supportive environ-
ment where the level of supervision and support may vary from low
to moderate, proportional to the child's ability to handle reduced
structure;
(d) May occasionally require intense levels of intervention to
maintain the least restrictive environment; and
(e) Requires a program flexible enough to allow:
1. Extended trials of independence when the child is capable;
2. A period of corrective and protective structure during re-
lapse; and
3. Counseling available from professional or paraprofessional
staff.
(4) A Level IV child:
(a) Has behavioral and physical, mental, or social needs that
may present a moderate risk of causing harm to himself or others;
(b) Requires a structured supportive setting with:
1. Therapeutic counseling available by professional staff; and
2. A physical, environmental, and treatment program designed
to improve social, emotional, and educational adaptive behavior.
(5) A Level V child:
(a) Has a severe impairment, disability, or need;
(b) Is consistently unable or unwilling to cooperate in his own
care;
(c) Presents a severe risk of causing harm to himself or others; and
(d) Requires Level IV services and:
1. Highly structured program with twenty-four (24) hour supervi-
sion; or
2. Specialized setting that provides safe and effective care for
a severe, chronic medical condition, behavioral disorder, or emo-
tional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment
Methodology:
(a) The cabinet shall base a per diem rate for the care of a
child placed by the cabinet in a private child-caring facility, upon
the program model cost analysis defined at KRS 199.641(1)(d).
(b) Each private, nonprofit child caring facility shall report to the
cabinet annually, on Form DPP-886, Cost Report and Time Study
and Instructions.
(2) The cabinet shall establish an index factor for payment on
behalf of a child for whom a level of care has been determined.
(a) The factor shall be determined as follows:
1. Based on the amount of treatment provided at each level of
care; and
2. By determining the median of:
a. Number of daily treatment hours, derived from time study
data, provided to children served by private, nonprofit child-caring
facilities; and
b. Level of care of children served by private, nonprofit child-
caring facilities that contract with the cabinet;
(b) For children whose level is determined, the median level of
care shall be represented by an index factor that is proportionate to
the amount of treatment provided to the children in the median
level pursuant to subparagraph 1 of this paragraph.
(3) A statewide median cost, including board, care, and treat-
ment components, for each level of care shall be calculated by
using a utilization factor of ninety (90) percent for residential treat-
ment and seventy-five (75) percent for a group home.
(4) To the extent that funds are appropriated, the payment rate
for each level of care shall be calculated by multiplying the median
cost by the index factor specific to that level of care, in accordance
with KRS 199.641(4). The rate for each level of care shall be ad-
justed by the Consumer Price Index during each Intervening period
between the fiscal year used for the cost analysis and calculation of
the rate.
(5) Statewide median cost shall be calculated:
(a) Using a utilization factor of eighty (80) percent:
1. For an emergency shelter with a treatment license:
   a. Board;
   b. Care; and
   c. Treatment components; or
2. For an emergency shelter without a treatment license:
   a. Board; and
   b. Care components; and
(b) Adjusting for each level of care by the Consumer Price
Index during each Intervening period between the fiscal year used
for the cost analysis and calculation of the rate.
(6)(a) To the extent funds are available, an incentive payment
for a private child-caring facility that participates in a per diem rate
contract with the cabinet shall be determined by evaluating the
performance of the child-caring facility, in accordance with KRS
199.641(2)(a). Measurable performance outcomes shall include:
1. Child safety while in the care of a private child-caring facility
or child-placing agency;
2. Child safety after reunification with the child's family;
3. Adequate educational support;
4. Reduced time spent in out-of-home care without an increase
in the rate of out-of-home care reentry;
5. Increased placement stability during the service period;
6. Increased achievement of permanency goals; and
7. Increased stability in permanency placement following
planned discharge.
(b) The cabinet's contract with a private child-caring facility
shall specify the:
1. Indicators used to measure the performance outcomes de-
scribed in paragraph (a) of this subsection of this section; and
2. Target percentages used as performance goals.
(c) Each child in the custody of the cabinet who is placed in a
private child-caring facility during the contract period shall be in-
cluded in the percentage of children for whom the cabinet expects
achievement of an outcome.
(d) At the time the contract period expires, each private child-
caring facility shall be ranked based on the percentage of children
for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(f) In addition to services provided on a per diem rate, the facility shall solicit proposals for private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services shall:

(a) Be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families; and

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:300, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

(a) Level I - forty-seven (47) dollars and sixty-one (61) cents, effective February 1, 2009; sixty-one (61) dollars and nineteen (19) cents;

(b) Level II - fifty-seven (57) dollars and twenty-one (21) cents, effective February 1, 2009; sixty-one (61) dollars and fifty-two (52) cents;

(c) Level III - $102.03, effective February 1, 2009; $109.74;

(d) Level IV - $140.46, effective February 1, 2009; $161.69; and

(e) Level V - $204.52, effective February 1, 2009; $210.64.

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:360. The rate for emergency shelter care shall be:

(a) $115.31 per day for a child-caring facility with a treatment license; or

(b) $101.41 per day for a child-caring facility without a treatment license.

(2) If a child’s treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child’s assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child’s individual treatment plan.

(3) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child’s individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be thirty-nine (39) dollars and ninety-nine (99) cents, effective February 1, 2009; forty-three (43) dollars.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - sixty-seven (67) dollars and eighty-nine (89) cents, effective February 1, 2009; seventy-three (73) dollars.

(b) Level III - seventy-four (74) dollars and twenty (20) cents, effective February 1, 2009; seventy-nine (79) dollars and seventy-eight (78) cents.

(c) Level IV - ninety (90) dollars and thirty-one (31) cents, effective February 1, 2009; ninety-seven (97) dollars and eleven (11) cents.

(d) Level V - $124.88, effective February 1, 2009; $134.26.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, thirty-nine (39) dollars and ninety-nine (99) cents per day, effective March 1, 2009; forty-three (43) dollars per day, for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

   a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

   b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

   a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

   b. Allow a child to cope with the disability or distress;

   c. Provide access to improving the educational or vocational status of the child; and

   d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child’s developmental level consisting of completed forms:

   a. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or

   b. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and

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

- 2176 -
3. To the gatekeeper and designated cabinet staff, a copy of the following completed forms:
   a. On a quarterly basis, for a private child care residential placement, CRP-001, Children's Review Program Residential Application for Level of Care Payment; or
   b. On a semianual basis for a foster care placement, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment;
   (d) Provide outcomes data and information as requested by the gatekeeper; and
   (e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:
      1. The Council on Accreditation; or
      2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.
(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:
   (a) Suspend payments until the necessary information has been submitted to the gatekeeper;
   (b) If a child's level is reduced after timely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or
   (c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:
   (a) Level of care remains unchanged, payments shall continue unchanged;
   (b) Level of care is reduced, and:
      1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or
      2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or
   (c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioning from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:
   (a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or
   (b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination.
(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:
   (a) New information which supports the request for a new level; and
   (b) Completion of the "request for redetermination" section of one (1) of the following forms:
      1. DPP-886, Private Child Care Client Inter-agency Referral Form for an initial or reassigned level;
      2. CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization form for a utilization review;
      3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review;
      4. CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment form for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review and admission, and the gatekeeper assigns a higher level with a CRP-004, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:
   (a) The date of the most recent utilization review due date; or
   (b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:
   (a) Higher level is assigned by the gatekeeper with a CRP-004, the increased payment shall be effective the day after the request is received by the gatekeeper; or
   (b) Lower level is assigned by the gatekeeper with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:
   (a) Department completing a level of care packet for a level assignment; or
   (b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:
      1. A cover letter requesting a reassignment;
      2. An assessment of the child; and
      3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

(4) If the child has an IQ of seventy (70) or above:
   a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-care facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by the decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:
   (a) Review the request; and
   (b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accor-
dance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) *Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)*, edition 7/00;
   (b) *Child Behavior Checklist for Ages 6-18 (Achenbach)*, edition 6/01;
   (c) *CRP-001, Children’s Review Program Residential Application for Level of Care Payment*, edition 11/04;
   (d) *CRP-002, Children’s Review Program Private Child Care Notice of Level of Care Payment Authorization*, edition 11/04;
   (e) *CRP-003, Children’s Review Program Foster Care Application for Level of Care Payment*, edition 7/07;
   (f) *CRP-004, Children’s Review Program Notice of Level of Care Redetermination*, edition 11/04;
   (g) *CRP-005, Children’s Review Program DCBS Foster Care Utilization and Level of Care Redetermination*, edition 11/04;
   (h) *CRP-006, Children’s Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment*, edition 7/07;
   (i) *DPP-114, Level of Care Schedule*, edition 6/08;
   (j) *DPP-886, Private Child Care Client Inter-agency Referral Form*, edition 10/04;
   (k) *DPP-887, Application for Referral and Needs Assessment*, edition 07/07;
   (l) *DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities*, edition 10/04; and
   (m) *DPP-889, Assessment for Children’s Dual Diagnosis (Mental Retardation and Psychopathology)*, edition 1990.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: January 30, 2009
FILED WITH LRC: January 30, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 the agency in writing by March 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 31, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deangner, Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes the five levels of care based upon the needs of a child for whom the cabinet has legal responsibility, a payment rate for each level, responsibilities of the gatekeeper, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program cost analysis.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities/requirements of the gatekeeper and private provider, and rate setting methodology.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194.050(1), 199.841(4), 605.050(1)(d), and 605.150(1) by establishing the rate setting methodology, methodology for placement of a child committed to the cabinet with a private child care provider, levels of care, reimbursement rates, and related provider and gatekeeper responsibilities/requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in effective administration of the statutes through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Effective February 1, 2009, the Cabinet will reduce the per diem reimbursement rates for private child care providers who care for children in State custody. The per diem reimbursement rate for Level V children in residential treatment program will be reduced by 3%; the per diem reimbursement rates for all other levels of care in residential programs will be reduced by 7%. All per diem reimbursement rates for child-placing programs will be reduced by 7%. Private child care rates for emergency shelter care will not change.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary because of the state’s revenue shortfall. Projected state revenues are insufficient to meet the state expenditures during this biennium. The Cabinet was hopeful that the reductions made at the beginning of the state fiscal year would be sufficient to address the state’s precarious financial plight; however, further reductions are necessary to address the burgeoning shortfall.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes, specifically KRS 194.050(1), 199.841(4), through the modification of private child care provider reimbursement rates congruent with available revenues identified for the program.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through a reduction in the amount of private child care provider reimbursement rates with available revenues identified for the program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 55 private child care providers who hold an agreement with the Cabinet for various types of placements. As of January 16, 2009, there are 3,259 children whose private child care providers received reimbursement for the children’s care.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this amendment, private child care providers may find it necessary to reduce the amount of treatment services offered or scale back agency capacity.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Impacted entities will not realize any direct benefits as a result of this amendment. However, it allows the Department to continue purchasing services from these entities within the constraint of the available state revenues as projected at the end of 2008.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There is no additional cost estimated to the administrative body.
(b) On a continuing basis: There is no additional cost estimated to the administrative body.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E, Medicaid Rehabilitation (restricted), and state funds are the source of funding for this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation and, if so, by how much: An increase in fees or funding will not be necessary to implement the amendment to this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly or indirectly increase any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Cabinet for Health and Family Services, Department for Community Based Services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 199.641(4), 605.060(1), 605.150(1)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.
(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not involve any increased costs, but will reduce the projected operating costs of the program by $2,599,100 for the current state fiscal year.
(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will reduce the projected costs of the program by $7,505,500 for State Fiscal Year 2010.
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
NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 13, 2009

VOLUME 35, NUMBER 9 – MARCH 1, 2009

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Administrative Regulation)

302 KAR 16:111. Violations, revocations, and suspensions of business identification number.

RELATES TO: KRS 247.233
STATUTORY AUTHORITY: KRS 247.233
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233

requires the department to establish a comprehensive list of violations and civil penalties not to exceed ten thousand dollars. This administrative regulation establishes a comprehensive list of violations and the fee schedule and the procedure for suspension or revocation of a business identification number.

Section 1. (1) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty not less than $100 and not more than $10,000:

(a) Operating without a current business identification number;
(b) Operating without current insurance in the required coverage amount;
(c) Operating a ride or attraction while it is under a stop operation order;
(d) Operator not present during operation of ride or attraction;
(e) Use of blocking in foot switch breaker;
(f) Use of improper material for electrical fuse;
(g) Moving equipment after a reportable incident or tampering with evidence;
(h) Ride or attraction operating too close to high voltage;
(i) Ride or attraction positioned underneath utility lines;
(j) Operator impaired;
(k) Generator grounded incorrectly;
(l) Failure to maintain the ride or attraction in good mechanical condition;
(m) Failure to repair ride or attraction according to manufacturer specifications or recommendations;
(n) Failure to properly shield power units;
(o) Failure to use appropriate replacement parts;
(p) Violations are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $5,000:

(a) Failure to follow safety guidelines (manufacturer specifications);
(b) Failure to notify the department of an incident requiring a report within twelve (12) hours;
(c) Failure to submit a required incident report;
(d) Admitting an intoxicated patron on an amusement ride or attraction;
(e) Admitting a patron with inappropriate footwear; and
(f) Failure to completely fill out incident report form.

(2) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $1,000:

(a) Failure to have operational manuals on site;
(b) Failure to have maintenance manuals on site;
(c) Failure to have maintenance records on site;
(d) Fueling ride or attraction in undesignated area;
(e) Exceeding manufacturer’s speed of ride or attraction;
(f) Failure to properly secure the ride or attraction;
(g) Failure to have electrical disconnect within six (6) feet of operator;
(h) Operation of a ride or attraction by a operator under eighteen (18) years of age;
(i) Failure to use correct START/STOP switch;
(j) Operating ride or attraction in inclement weather;
(k) Failure to comply with proper operating procedures noted during inspection;
(l) Failure to properly anchor inflatable device;
(m) Failure to perform or document pre-operation inspections;
(n) Operating without an itinerary;
(o) Operating without the required number of operators as required by manufacturer;

(3) The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be assessed a civil penalty of not less than $100 and not more than $500.

(a) Failure to have Ground Fault Circuit Interrupter (GFCI) protection where required;
(b) Failure to properly place fencing barrier;
(c) Failure to have fire extinguishers in correct locations;
(d) Failure to have first aid kit on location;
(e) Failure to have inspection sticker in appropriate location; and

(f) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 1 of this administrative regulation, not to exceed $10,000.

(g) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 1 of this administrative regulation, not to exceed $10,000.

(h) Nothing in this section shall prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 3. Business Identification Number Suspension or Revocation.(1) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a business identification number to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend or revoke, or modify the provision of a business identification number once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a business identification number and place stop operation orders on all rides or attractions belonging to the owner for not longer than seven (7) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any business identification number issued under KRS 247.234 if it finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:

(a) Made a false or fraudulent statement to inspectors;
(b) Knowingly violated any provision of KRS 247.232 through 247.236 or any administrative regulations promulgated thereunder; or
(c) Failed to pay a administrative penalty or fee assessed by this chapter.

(4) Any owner whose business identification number is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the business identification number as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 13, 2009 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky
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40601. Individuals interested in being heard at this hearing shall
notify this agency in writing by March 18, 2009 five working days
prior to the hearing, of their intent to attend. If no notification of
intent to attend is received by that date, the hearing may be can-
celled. The hearing is open to the public. Any person who wishes
to be heard will be given the 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 be heard at the public hearing, you may submit
written comments on the proposed administrative regulation. Writ-
ten comments shall be accepted until March 31, 2009. Send writ-
ten notification of intent to be heard at the public hearing or written
comments on the proposed administrative regulation to the contact
person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky
Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort
Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes a comprehensive violation and fee
schedule and the procedure for suspension or revocation of a
business identification number.
(b) The necessity of this administrative regulation: The penali-
ties for violation of amusement ride and attraction statutes and
regulations were eliminated when KRS 247.200 was abolished. This
administrative regulation details violations and establishes
civil penalties for the violators. This regulation also details the
procedure of suspension and revocation of a license.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 247.233 requires the department
to establish a comprehensive list of violations. This administrative
regulation establishes a comprehensive violation and fee schedule
and the procedure for suspension or revocation of a business iden-
tification number.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation details violations and establishes civil penalties
for these violations. This regulation also details the procedure of
suspension and revocation of a license. This regulation will make
inspections more effective.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation:
(b) The necessity of the amendment to this administrative regula-
tion:
(c) How the amendment conforms to the content of the author-
tizing statutes:
(d) How the amendment will assist in the effective administra-
tion of the statutes:
(3) List the type and number or individuals, businesses, organ-
zations, or state and local governments affected by this regulation:
The administrative regulation will affect the amusement ride indus-
try. There are approximately four hundred and sixty (460) amuse-
bment businesses in the Commonwealth.
(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, includ-
ing:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: This regulation creates the violation
matrix. Businesses in violation of this administrative regulation
shall be given a notice of violation.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): No additional costs will be incurred by the businesses not
in violation of this section.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The businesses will be safer and
maintain records of safety that may be useful to the business.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of funding to be used for the implementa-
tion of this administrative regulation: No funding is required for
the implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change, if it is an amendment: There will be
no increase in fees with this regulation.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly increases any fees: This regulation will
not establish any new fees directly or indirectly. It does create ad-
ministrative penalties.
(9) TIERING: Is tiering applied? No, this regulation applies
equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
serve, 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 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:

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Administrative Regulation)

302 KAR 16:091. Rides and attractions not included in the
definition of amusement ride or attraction.

RELATES TO: KRS 247.232
STATUTORY AUTHORITY: KRS 247.232
NECESSITY, FUNCTION, AND CONFORMITY: KRS
247.232(1)(b) authorizes the Commissioner of the Department of
Agriculture to promulgate administrative regulations to designate
other rides and attractions that are not included in the definition
of "amusement ride or attraction". This administrative regulation es-
blishes the list of rides or attractions not specifically mentioned in
the statute that are not included in the definition.

Section 1. Amusement ride or attraction does not include:
(1) Dinner trains;
(2) Any amusement ride or attraction utilizing animals;
(3) Structures holding slides less than fifteen (15) feet above

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the ground at the base of the slide;
(4) Items used strictly for educational purposes as part of a structured class or program;
(5) All terrain vehicles, paddleboats, canoes, or rafts;
(6) Haunted houses;
(7) Hay rides;
(8) Corn Mazes or any other noninflatable obstacle course;
(9) Mechanical bulls;
(10) Sled lifts, aerial lifts, or aerial tramways;
(11) Bicycles or bicycle courses;
(12) Children's toys;
(13) Watercraft other than bumper boats;
(14) Swamp buggies;
(15) Ice skating facilities;
(16) Roller skating facilities;
(17) Base jumping equipment;
(18) Paintball equipment or courses;
(19) Lazy rivers;
(20) Wave pools;
(21) Trampolines not requiring an assistive device;
(22) Self or manually belayed rappelling equipment and facilities;
and
(23) Privately owned, not open to the public facilities.

RICHEL FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4:00 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing may notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Anyone 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Meri Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation defines amusement rides and attractions that are not included in the definition of amusement rides and attractions for regulatory purposes.
(b) The necessity of this administrative regulation: This regulation creates a list of items that are not to be included in the definition of amusement ride or attraction. Items listed in the section will not require business identification numbers or safety inspection.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that are not included in the definition of amusement ride or attraction.
(d) How will this administrative regulation currently assist or will assist in the effective administration of the statutes: This regulation further defines items that are not to be regulated by the Commonwealth. This list of items narrows the scope of the statute and the regulatory workload required of amusement ride inspectors.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.

(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number or individual(s), businesses, organizations, state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 460 amusement businesses in the Commonwealth.

(c) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates a list of things that will not be regulated. The businesses will need to do nothing.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost or reduced operational costs.
(b) On a continuing basis: No cost or reduced operational costs.

(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 (+/-):
GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Administrative Regulation)

302 KAR 16:101. Operate amusement ride or device defined.

RELATES TO, KRS 247.232.
STATUTORY AUTHORITY: KRS 247.232
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(4) and (5) define "operator" and "operator assistant". This administrative regulation establishes the definition of operate.

Section 1. The act of "operating an amusement ride or attraction" means the supervision and observation of the amusement ride or attraction while in operation, and the normal starting and stopping of the amusement ride or attraction.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency by writing to March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation defines operating an amusement ride or attraction, and designated rides that do not require an operator.
   (b) The necessity of this administrative regulation: This regulation defines operating an amusement ride or attraction. The statute places additional safety requirements on operators of rides or attractions.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that do not require an operator. This regulation helps make clear the distinction between an operator and an operator assistant by defining the operation.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines rides that do not require and operator. This will make inspections by amusement ride inspectors more efficient.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.
   (a) How the amendment will change this existing administrative regulation:
   (b) The necessity of the amendment to this administrative regulation:

   (c) How the amendment conforms to the content of the authorizing statutes:
   (d) How the amendment will assist in the effective administration of the statutes:
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.
   (f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation defines the word operate. The businesses must comply with this definition to assure compliance with operators.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.
      (d) Provide an estimate of how much it will cost to implement this administrative regulation:
         (a) Initially: No cost or reduced operational costs.
         (b) On a continuing basis: No cost or reduced operational costs.
      (e) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.
      (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: There will be no increase in fees with this regulation.
      (g) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any fees directly or indirectly.
      (h) TIERING: Is tiering applied: No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
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?
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 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 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:
VOLUME 35, NUMBER 9 — MARCH 1, 2009

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Administrative Regulation)

302 KAR 16:121. Inflatable rides or attractions.

RELATES TO: KRS 247.236
STATUTORY AUTHORITY: KRS 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of inflatable rides or attractions when manufacturer specifications are not available.

Section 1. Inflatable rides and attractions do not require an operator.

Section 2. Only inflatable devices manufactured specifically for commercial use shall be used for commercial or rental purposes.

Section 3. Inflatable devices shall be anchored to the ground with rods or pins with at least one half inch diameter, at a minimum depth of 18 inches, and at a forty-five (45) degree angle to the ground. If pins or rods are impracticable, seventy-five (75) pounds of sandbags are to be used at each anchor point.

Section 4. Safety signage is required if not printed by the manufacturer on the inflatable. If the following information is not printed on an inflatable, the owner must provide a sign to display near the entrance of the inflatable while it is in operation with the following information, in its entirety:

(1) Remove shoes, eyeglasses and sharp objects before entering;
(2) No flips;
(3) No jumping or wrestling;
(4) Do not bounce closer than five feet from another person; and
(5) Do not bounce against the sides or near the doorway.

Section 5. All inflatable devices must use ground fault circuit interrupters for electrical components.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing 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 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of inflatable rides or attractions when manufacturer specifications are not available.
(b) The necessity of this administrative regulation: Inflatable rides and attractions have become a very popular and fast growing portion of the amusement industry. This regulation is necessary to promote safety and provide commercial operators and renters of inflatable devices a list of suggestions for operation in the event a manufacturer does not provide operational instructions.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of inflatable rides or attractions when manufacturer specifications are not available.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation provides guidance to inflatable users where they have not been provided such information
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
(d) How the amendment will assist in the effective administration of the statute: This is a new regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates requirements of the inflatable rental industry. The businesses must follow this regulation to be in regulatory compliance.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any new fees directly or indirectly.
(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Administrative Regulation)

302 KAR 16:131. Maintenance and repair of amusement ride or attractions.

RELATES TO: KRS 247.2351
STATUTORY AUTHORITY: KRS 247.2351
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.2351 requires the Department of Agriculture to establish replacement part guidelines for amusement rides and attractions. This administrative regulation establishes those guidelines.

Section 1. All amusement rides and attractions shall be maintained in good electrical and mechanical condition. The owner of an amusement ride or attraction shall follow the manufacturer's guidelines and recommendations for all maintenance procedures.

Section 2. Replacement parts (1) Amusement rides and attractions shall use manufacturer replacement parts, or replacement parts approved by the manufacturer, if available.
   (2) If an amusement ride or attraction manufacturer is no longer in business or the manufacturer's parts are no longer available, replacement parts must meet the manufacturers original equipment specifications.
   (3) If an amusement ride or attraction is unique or hand made, the owner is deemed to be the manufacturer.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 11, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes establish replacement part guidelines for amusement rides and attractions guidelines.
   (b) The necessity of this administrative regulation: KRS 247.2351 requires the Department of Agriculture to establish replacement part guidelines for amusement rides and attractions. This administrative regulation establishes those guidelines.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.2351 requires the Department of Agriculture to establish replacement part guidelines for amusement rides and attractions. This administrative regulation establishes those guidelines.
   (d) How this administrative regulation currently assists or will assist the effective administration of the statutes: This administrative regulation establishes procedures for maintenance and repairs of amusement rides and attractions. This regulation will make inspections more effective.
   (2) If 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 regulation.
   (c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
   (d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.
   (f) 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, including:
      (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation creates additional requirements for the maintenance and repair of amusement rides and attractions. The business must follow this regulation to be in compliance.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.
      (d) Provide an estimate of how much it will cost to implement this administrative regulation:
         (a) Initially: No additional costs.
         (b) On a continuing basis: No additional costs.
      (f) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.
      (g) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.
      (h) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any new fees directly or indirectly.
      (i) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
(c) How much will it cost to administer this program for the first year?
(d) How much will it cost to administer this program for subsequent years?

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

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

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(New Administrative Regulation)

302 KAR 16:140. Amusement rides or attractions not requiring an operator.

RELATES TO: KRS 247.232
STATUTORY AUTHORITY: KRS 247.232
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of “amusement ride or attraction”. This administrative regulation establishes the list of rides or attractions not requiring an operator.

Section 1. The following amusement ride or attraction does not require an operator:
(1) Playports; and
(2) Inflatables.

RICHIE FARMER, Commissioner
APPROVED WITH LRC: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation lists the amusement ride or attractions that do not require an operator for operation.
(b) The necessity of this administrative regulation: This regulation creates an exemption from the requirement to have an operator at all times.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that are not included in the definition of amusement ride or attraction. This regulation creates an exemption from the requirement to have an operator present only.
(d) How will this administrative regulation currently assist or will assist in the effective administration of the statutes: This regulation furthers items that are not to be regulated by the Commonwealth. This list of items narrows the scope of the statute and the regulatory workload required of amusement ride inspectors.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.
(a) How the amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statute: This is a new regulation.
(d) How the amendment will assist in the effective administration of the statute: This is a new regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately 460 amusement businesses in the Commonwealth.
(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 (5) will have to take to comply with this administrative regulation or amendment: This regulation creates a list of things not requiring an operator. The businesses will need to do nothing.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: No cost or reduced operational costs.
(b) On a continuing basis: No cost or reduced operational costs.
(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees with this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any fees directly or indirectly.
(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No

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:

EDUCATION CABINET
Kentucky Board of Education
Department of Education (Repealer)


RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. 1751-1769, 42 U.S.C. 1771-1789

STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 702 KAR 6:030, Principal’s responsibilities. This administrative regulation is no longer required because the enactment of KRS 158.852 requires districts to appoint a school food service director to oversee the nutrition program in the district.

Section 1. 702 KAR 6:030, Principal’s responsibilities, is hereby repealed.

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

ELAINE FARRIS, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: February 13, 2009
FILED WITH LRC: February 13, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 26, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is to repeal administrative regulation 702 KAR 6:030, Principal’s responsibilities. This administrative regulation is no longer needed because subsequent changes to state and federal statute have made it unnecessary.

(b) The necessity of this administrative regulation: State statute, KRS 158.852, rendered the regulation moot.

(c) How this administrative regulation conforms to the content of the authorizing statute: Not applicable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable.

(2) If 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 statute: 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: 174 Kentucky school districts

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Not applicable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: Not applicable.

(b) On a continuing basis: Not applicable.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government
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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. KRS 158.852

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? 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 (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.
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
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.
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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 9, 2009

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 9, 2009 at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Leslie Combs called the meeting to order, the roll call was taken. The minutes of the January 13, 2009 meeting were approved.

Present were:

Members: Senators Alice Forgy Kerr, Joey Pendleton, Gary Tapp, and Elizabeth Torl; and Representatives Robert Damron, Danny Ford, Jimmie Lee, and Leslie Combs.

LRG Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenifer, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Becky Gilpatrick, Kentucky Higher Education Assistance Authority; Robert Brown, Jaime Rice, Alicia Sneed, Education Professional Standards Board; Mark Sipek, Kentucky Personnel Board; Beau Barnes, Teachers' Retirement; Richard Dobson, Ricky Haven, Department of Revenue; Michael Burleson, Kentucky Board of Pharmacy; Jeff Boles, James Grawe, Dr. Ed Hall, Frances Short, Kentucky Board of Veterinary Examiners; Cheryl Bentley, Michael West, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists; Allen Hall, Carolyn Kyler, Board of Licensed Professional Counselors; Karen Alexy, Margaret Everson, Darin Moore, Catherine Yorke, Kentucky Department of Fish and Wildlife Resources; Sandra Gruzyzsky, Franklin C. Hall, Jr., Julie W. Roney, Ralph Schiefferde, Division of Water; Sean Alteri, Millie Ellis, Division for Air Quality; Tony DeName, Department for Workforce Investment; Michael Bennett, Dan Chapman, Department of Housing Buildings and Construction; Deborah Anderson, Shirley Eldridge, Phyllis Sosa, Department for Aging and Independent Living; Virginia Carrington, Elizabeth Caywood, Shari Sullivan, Steve Veno, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Monday, February 9, 2009, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

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. Becky Gilpatrick, Student Aid Branch manager, represented the division.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION PROFESSIONAL STANDARDS BOARD: Board
16 KAR 6:010. Written examination prerequisites for teacher certifications. Robert Brown, director of professional learning and assessment; Jaime Rice, assessment consultant; and Alicia A. Sneed, director of legal services, represented the board.
A motion was made and seconded to approve the following amendments: (1) to amend the Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD: Board
101 KAR 1:325. Probationary periods. Mark Sipek, executive director, represented the board.

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: General Rules
102 KAR 1:360. Kentucky Teachers' Retirement System Trusteess Education Program. Beau Barnes, deputy executive secretary and general counsel, represented the system.

Department of Revenue: Office of Sales and Excise Taxes: Sales and Use Tax; Registration and Collection

Sales and Use Tax; Miscellaneous Retailer Occupations
103 KAR 27:130. Printing and related industries.
A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Administration and Accounting
103 KAR 31:190. Alternate fuel, gasification, and renewable energy facility refunds on construction costs.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 2, 3, 4, and 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.

GENERAL GOVERNMENT CABINET: Kentucky Board of Pharmacy: Board
201 KAR 2:230. Special limited pharmacy - central refill pharmacy. Mike Burleson, executive director, represented the board.

201 KAR 2:310. Compounding for a practitioner's office or institutional administration.
A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure and Certification for Dietitians and Nutritionists: Board
201 KAR 33:020. Renewals. Cheryl Bentley, board chair; Frances Short, director of the Division of Occupations and Professions; and Michael West, assistant attorney general, represented the board.
In response to questions by Representative Ford, Ms. Bentley stated that LRC staff had notified the board that the authorizing statute for this administrative regulation specifically required reversion without notice. Mr. West stated that the board intended to send the notice as a courtesy.
Subcommittee staff stated that the legislative members may want to consider amending the statute to provide for notice.
A motion was made and seconded to approve the following amendments: to amend Section 3 to delete subsection (2). Without objection, and with agreement of the agency, the amendment was approved.

Board of Licensed Professional Counselors: Board
201 KAR 36:070. Education requirements. James Grawe, assistant attorney general and general counsel for the board; Allen Hall, board chair; and Frances Short, director of the Division of Occupations and Professions, represented the board.
A motion was made and seconded to approve the following amendments: to amend Section 1 to clarify the educational requirements for an applicant with a degree in a related field. Without objection, and with agreement of the agency, the amendments were approved.
were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2:132. Elk depredation permits, landowner cooperat-

permits, and quota hunts. Karen Alexy, wildlife division director;
Darin Moore, administrative director; and Catherine York, deputy
general counsel, represented the department.

A motion was made and seconded to approve the following am-
endments: (1) to amend the STATUTORY AUTHORITY para-
graph to add KRS 150.120(4); (2) to amend Section 5 to: (a) pro-
vide that persons who hold their CCDW may carry a concealed
deadly weapon while hunting; and (b) prohibit other persons from
carrying certain items while hunting rather than prohibiting hunting
while carrying those items; and (3) to amend Sections 3 through 5,
and 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.

301 KAR 2:221 & E. Waterfowl seasons and limits.
301 KAR 2:222 & E. Waterfowl hunting requirements.

ENERGY AND ENVIRONMENT CABINET: Department for En-
vironmental Protection: Division of Water: Publie Water Supply
401 KAR 8:010. Definitions for 401 KAR Chapter 8. Sandy
Grzeskcy, executive director, and Julie W. Roney, Division of Wa-
ter coordinator, represented the division.

In response to a question by Senator Tapp, Subcommittee
staff stated that most of the proposed amendments to 401 KAR
Chapter 8 were the result of changes to KRS Chapter 13A, which
allow administrative regulations to cross-reference federal regu-
lations by citation rather than incorporating them by reference.

401 KAR 8:020. Public and semipublic water supplies; general
provisions.

A motion was made and seconded to approve the following am-
endments: (1) to amend the RELATES TO paragraph to correct
citations; and (2) to amend Sections 2 and 4 to comply with the
drafting and format requirements of KRS Chapter 13A. Without
objection, and with agreement of the agency, the amendments
were approved.

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.

A motion was made and seconded to approve the following am-
endments: to amend Sections 1 and 2 to comply with the draft-
ing and format requirements of KRS Chapter 13A. Without objec-
tion, and with agreement of the agency, the amendments were
approved.

401 KAR 8:200. Microbiological monitoring.

A motion was made and seconded to approve the following am-
endments: (1) to amend the RELATES TO paragraph to correct
citations; and (2) to amend Section 3 to comply with the draft-
ing requirements of KRS Chapter 13A. Without objection, and with
agreement of the agency, the amendments were approved.

401 KAR 8:250. Inorganic and organic chemical sampling,
analytical techniques, and maximum contaminant levels.

A motion was made and seconded to approve the following am-
endments: to amend Sections 1 and 2 to make a technical cor-
rection. Without objection, and with agreement of the agency, the
amendments were approved.

401 KAR 8:300. Lead and copper.

A motion was made and seconded to approve the following am-
endment: to amend the RELATES TO paragraph to correct a
sentence. Without objection, and with agreement of the agency, the
amendments were approved.

401 KAR 8:510. Disinfectant residuals, disinfection by-
products, and disinfection by-product precursors.

In response to a question by Representative Ford, Ms. Roney
stated that requirements that were new to this administrative regu-
lation had been in effect at the federal level for years and, in es-
tance, this amendment did not provide new requirements for public
water supplies.

401 KAR 8:550. Radionuclides.

A motion was made and seconded to approve the following am-
endments: to amend Section 1 to make a technical correction.
Without objection, and with agreement of the agency, the amend-
ment was approved.

Division of Air Quality: New Source Standards
401 KAR 59.015. New indirect heat exchangers. Sean Allen,
assistant director, and Mike Ellis, environmental technologist,
represented the division.

A motion was made and seconded to approve the following am-
endments: to amend Sections 7 and 8 to make technical correc-
tions. Without objection, and with agreement of the agency, the
amendments were approved.

401 KAR 59.017. Repeal of 401 KAR 59 016.

Existing Source Standards
401 KAR 61:005. General provisions.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Department for Workforce Investment: Office of Employment
and Training: Unemployment
707 KAR 1:090. Unemployed worker's reporting requirements.
Tony DeName, director, represented the office.

In response to a question by Representative Lee, Mr. DeName
stated that the office had had difficulty in the last six (6) weeks with
overload to the Internet and telephone systems for filing for unem-
ployment. He stated that the problems seemed to have been fixed.
He also stated that the problems arose because most applicants
filed on the same day, Sunday, despite the fact that they could file
any day.

A motion was made and seconded to approve the following am-
endments: (1) to amend the RELATES TO paragraph to correct
statutory citations; and (2) to amend Sections 2 and 3 to comply with
the drafting and format requirements of KRS Chapter 13A.
Without objection, and with agreement of the agency, the amend-
ments were approved.

PUBLIC PROTECTION CABINET: Department of Housing,
Buildings, and Construction: Division of Building Code En-
forcement: Manufactured Homes and Recreational Vehicles
815 KAR 25:080 & E. Requirements for certified installer seals
and certification of manufactured home Installers. Michael D. Ben-
nett, staff attorney, and Dan Chapman, supervisor, represented the
division.

A motion was made and seconded to approve the following am-
endments: (1) to amend the STATUTORY AUTHORITY para-
graph to correct statutory citations and make a technical correction;
(2) to amend Sections 1 through 3, 5, and 6 to comply with the
drafting and format requirements of KRS Chapter 13A; and (3) to
amend Section 6 to revise material incorporated by reference.
Without objection, and with agreement of the agency, the amend-
ments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department
for Aging and Independent Living: Aging Services
910 KAR 1:240. Certification of assisted-living communities.
Deborah Anderson, commissioner, and Phyllis Sosa, branch man-
ager, represented the department.

Department for Income Support: Family Support
921 KAR 1:410. Child support collection and enforcement.
Steve Veno, deputy commissioner, represented the department.

921 KAR 1:430. Child support administrative hearings.

A motion was made and seconded to approve the following am-
endments: (1) to amend the RELATES TO paragraph to add a
statutory citation; (2) to amend the NECESSITY, FUNCTION,
AND CONFORMITY paragraph to clearly state the necessity for and
function served by this administrative regulation, as required by
KRS 13A:220; and (3) to amend Sections 4 and 7 to comply with
the drafting and format requirements of KRS Chapter 13A.
Without objection, and with agreement of the agency, the amend-
ments were approved.
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). Virginia Carmington, branch manager, and Elizabeth Caywood, internal policy analyst, represented the department.

Ms. Caywood stated that comments had been received Tuesday, and the statutory deadline for the agency to propose amendments had passed. She stated that the amendment was not substantive but clarified existing provisions. Representative Lee made a motion, seconded by Senator Pendleton, to amend this administrative regulation and 921 KAR 2:370 as requested by the agency.

A motion was made and seconded to approve the following amendment: to amend Section 2 to redefine the term, “barriers,” to mean a limitation in an individual’s ability to become employed and self-sufficient or to comply with K-TAP requirements. Without objection, and with agreement of the agency, the amendment was approved.

921 KAR 2:017. Kentucky works supportive services.


A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify a definition; (2) to amend Section 2 to redefine the term, “barriers,” to add to the allowable activities listed in subsection (b) of this section, and for other minor changes; and (3) to amend Section 3(7) to clarify that if an individual with an ABA disability was unable to participate in a comparable work activity, the individual shall be provided with reasonable accommodations or program modifications. Without objection, and with agreement of the agency, the amendments were approved.

Food Stamp Program

921 KAR 3:035. Certification process.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:042. Food stamp employment and training program.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:050. Claims and additional administrative provisions.

921 KAR 3:060. Administrative disqualification hearings and penalties.

921 KAR 3:090. Simplified assistance for the elderly program or “SAFE”.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the March 9, 2009, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: 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 Veterinary Examiners: Board
201 KAR 16:015. Fees. James Grawe, assistant attorney general and general counsel for the board; Dr. Ed Hall, assistant director of animal health for the Kentucky Department of Agriculture and a board member; and Frances Short, director of the Division of Occupations and Professions, represented the board.

In response to questions by Representative Lee, Dr. Hall stated that the board had reported the fee adjustment to the Kentucky Veterinary Association, but that he didn’t know if the association had notified each individual veterinarian. He also stated that the board’s financial analysts had indicated that, without the fee increase, the board would begin operating with a negative balance. He did not have the exact financial data with him. Mr. Grawe stated that a newsletter was sent to each veterinarian with information regarding the fee adjustment.

Representative Lee stated that a separate letter was necessary to notify each veterinarian because members may not have read the entire newsletter. He requested a commitment from the board that each licensed veterinarian would be sent a letter regarding the fee increase prior to the effective date of this administrative regulation. The board agreed.

In response to questions by Co-Chair Tori, Dr. Hall stated that the fee had not been increased in at least twenty (20) years and that the adjustment was needed because the structure and frequency of licensure had changed. He stated that the fee was the board’s only source of revenue and that, while it was the only way to correct the expected deficit, their financial analysts chose the lowest fee increase that would resolve the expected deficit.

In response to a question by Representative Ford, Dr. Hall stated that $11,000 had been swept in fiscal year 2008 and that $139,900 was expected to be swept in fiscal year 2009 for use by the state’s general fund.

In response to a question by Senator Pendleton, Dr. Hall stated that the board currently had funds they expected to be swept in fiscal year 2009.

Senator Pendleton stated that a board should only raise fees to cover costs and should not raise fees to an amount so that money would remain to be swept.

Senator Tapp requested that the board defer consideration of this administrative regulation until the March meeting of the subcommittee. His motion was seconded by Representative Ford. Mr. Grawe stated that the agency would agree to the deferral request.

Co-Chair Tori requested that the board defer consideration of this administrative regulation and stated that the subcommittee needed exact justification in the form of financial data regarding swept funds, funds expected to be swept, and how much of the fee increase would be expected to be swept. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Representative Lee requested that the board return to the subcommittee meeting in March to report the board’s actual financial needs.

Board of Nursing: Board
201 KAR 20:400. Delegation of nursing tasks.

Board of Physical Therapy: Board
201 KAR 22:020. 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.

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: 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.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council: Council
603 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 3.030. Appointments.
780 KAR 3.035. Employee evaluations.
780 KAR 3.040. Special appointments.
780 KAR 3.050. Employment lists.

COUNCIL ON POSTSECONDARY EDUCATION: Council
785 KAR 1:010. GED Testing Program.

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: Department of Insurance: 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.

Kentucky Horse Racing Commission: Harness Racing
811 KAR 1:070 & E. Licensing standardbred racing.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Community Alternatives: Medicaid Services
907 KAR 1:585. Estate recovery.
907 KAR 1:650. Trust and transferred resource requirements for Medicaid.
907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.

Department for Aging and Independent Living: Guardianship
910 KAR 2:040. Service provisions for adult guardianship.
910 KAR 2:050. Compensation for guardianship program services.

Other Business:
Subcommittee staff introduced Representative Leslie Combs and stated that Representative Weston had left the subcommittee and Representative Damron had resigned as Co-Chair, but remained a member of the subcommittee. Representative Lee made a motion, seconded by Representative Ford, that Representative Combs be nominated for House Co-Chair. Representative Combs accepted the nomination. Representative Lee made a motion, seconded by Representative Ford, to end House Co-Chair nominations. Representative Combs was unanimously endorsed as House Co-Chair of the subcommittee.

Senator Tapp stated that he had recently attended the Health and Environmental Issues summit in Chicago and, based on information he received at that conference, he expected federal regulations to be promulgated that would impact health and environmental administrative regulations in Kentucky, especially administrative regulations relating to coal and coal mining.

The Subcommittee adjourned at 1:55 p.m. until March 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.

HOUSE STANDING COMMITTEE ON EDUCATION
Meeting of February 10, 2009

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Education for its meeting of February 10, 2009, having been referred to the Committee on January 7, 2009, pursuant to KRS 13A.290(6):

703 KAR 5:070
703 KAR 5:080
703 KAR 5:140
704 KAR 3:390

The administrative regulations were deferred pursuant to a request by the Department of Education.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

703 KAR 5:070
703 KAR 5:080
703 KAR 5:140
704 KAR 3:390

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the Education meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 12, 2009

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Welfare for its meeting of February 12, 2009, having been referred to the Committee on February 4, 2009, pursuant to KRS 13A.290(6):

201 KAR 2:105
201 KAR 20:161
920 KAR 2.020
921 KAR 1:020
921 KAR 1:390
921 KAR 1:400

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 12, 2009 meeting, which are hereby incorporated by reference.

SENATE STANDING COMMITTEE ON EDUCATION
Meeting of February 12, 2009

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Education for its meeting of Education, having been referred to the Committee on January 7, 2009, pursuant to KRS 13A.290(6):

703 KAR 5:070
703 KAR 5:080
703 KAR 5:140
704 KAR 3:390

The administrative regulations were deferred pursuant to a request by the Department of Education.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 18, 2009

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 18, 2009, having been referred to the Committee on February 4, 2009, pursuant to KRS 13A.290(6):

201 KAR 2:105
201 KAR 20:161
920 KAR 2.020
Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 18, 2009 meeting, which are hereby incorporated by reference.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

KRS Index

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 35 of the Administrative Register.

Technical Amendment Index

The Technical Amendment Index is a list of administrative regulations which have had technical, 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.
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### VOLUME 35

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register

(1) 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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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2008 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(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.
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