ARRS – AUGUST 11, 2009 TENTATIVE AGENDA......................... 271
REGULATION REVIEW PROCEDURE......................................... 274

EMERGENCIES:
Personnel Cabinet.......................................................... 275
Department of Insurance.................................................. 287
Cabinet for Health and Family Services............................... 306

AS AMENDED:
Department of Revenue.................................................... 310
Board of Accountancy......................................................... 310
Board of Pharmacy............................................................ 321
Board of Nursing............................................................... 322
Department of Agriculture.................................................. 324
Cabinet for Health and Family Services............................... 325

AMENDED AFTER COMMENTS:
EEC: Division of Water....................................................... 337

PROPOSED AMENDMENTS RECEIVED THROUGH NOON,
July 15, 2009:
Personnel Cabinet.......................................................... 414
Kentucky Real Estate Commission....................................... 429
Board of Barrenness.......................................................... 437
Department of Fish and Wildlife Resources............................ 439
EEC: Division of Water....................................................... 442
EEC: Division for Air.......................................................... 459
Kentucky State Police......................................................... 461
Transportation Cabinet...................................................... 464
Kentucky Board of Education............................................. 466
Department of Insurance.................................................... 471
Cabinet for Health and Family Services............................... 482

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, July 15, 2009:
Kentucky Real Estate Commission....................................... 485
EEC: Division of Water....................................................... 486
EEC: Division for Air.......................................................... 493
Kentucky Board of Education............................................. 496
Department of Insurance.................................................... 499
Cabinet for Health and Family Services............................... 516

ARRS Report............................................................. 519
OTHER COMMITTEE REPORTS.............................................. 521

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates.......................................... B - 2
KRS Index........................................................................ B - 7
Technical Amendments...................................................... NONE
Subject Index....................................................................... B - 11

MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet August 11, 2009 at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 271-273 of this Administrative Register.
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, August 11, 2009, at 1:00 p.m., Room 149 Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

Kentucky Loan Program
11 KAR 3:100. Administrative wage garnishment.

KHEAA Grant Programs
11 KAR 5:145. CAP grant award determination procedure.

EDUCATION PROFESSIONAL STANDARDS BOARD

Advanced Certification and Rank
16 KAR 8:030. Continuing education option for certificate renewal and rank change.

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue

Forms
103 KAR 3:020. Sales and telecommunications forms manual.

Kentucky Retirement Systems

General Rules
105 KAR 1:390 & E. Employment after retirement. (*E* expires 12/12/09)

Office of the Secretary

Property
200 KAR 5:315. Debarment. (Comments Received, SOC ext.)

GENERAL GOVERNEMENT CABINET
Board of Pharmacy

Board
201 KAR 2:320. Permit requirements for manufacturers. (Comments Received, SOC ext.)

Kentucky Real Estate Commission

Real Estate Commission
201 KAR 11:230. Continuing education requirements.

Board of Hairdressers and Cosmetologists

Board
201 KAR 12:105 & E. School districts. (*E* expires 12/6/2009)

Board of Veterinary Examiners

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

Board of Chiropractic Examiners

Board
201 KAR 21:090 & E. Coursework for two (2) year prechiropractic education. (*E* expires 11/17/03)(Deferred from July)

Kentucky Real Estate Appraisers Board

Board
201 KAR 30:010. Definitions for 201 KAR Chapter 30.
201 KAR 30:020. Types of appraisers required in federally-related transactions; certification and licensure.
201 KAR 30:050. Examination, continuing education, and experience requirement.
201 KAR 30 070. Grievances.
201 KAR 30:190. Distance education standards.

OFFICE OF THE GOVERNOR
Department of Veterans' Affairs

Kentucky Veterans' Program Trust Fund
201 KAR 37:010 & E. Kentucky Veterans' Program Trust Fund, administration of fund. (*E* expires 11/3/09)(Deferred from July)

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Horse Park Commission

Kentucky Horse Park
300 KAR 7:010. Golf carts, all-terrain vehicles and horse trailers. (Deferred From July)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

Water Quality
401 KAR 5:002. Definitions for 401 KAR Chapter 5. (Comments Received, SOC ext.)
401 KAR 5:005. Permits to construct, modify, or operate a facility. (Comments Received, SOC ext.)
401 KAR 5:055. Scope and applicability of the KPDES Program. (Comments Received, SOC ext.)
401 KAR 5:060. KPDES applications requirements. (Comments Received, SOC ext.)
401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System. (Comments Received, SOC ext.)

Public Water Supply
401 KAR 8 010. Definitions for 401 KAR Chapter 8. (Comments Received)
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

401 KAR 8:022. Sanitary surveys. (Comments Received)
401 KAR 8:075. Consumer confidence reports. (Comments Received)
401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors. (Deferred from July)
401 KAR 8 600. Secondary standards. (Comments Received)

Division of Waste Management

Solid Waste Facilities
401 KAR 47:090. Solid waste permit fees. (Comments Received)

JUSTICE AND PUBLIC SAFETY CABINET
Office of the Secretary

Special Law Enforcement Officers
500 KAR 2:011. Repeal of 500 KAR 2:010. (Deferred from July)
500 KAR 2:020. Filing and processing SLEO commissions. (Deferred from July)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education

Food Service Programs
702 KAR 6:010. Local responsibilities. (Deferred from April)
702 KAR 6:020. District school nutrition director. (Deferred from April)
702 KAR 6:031. Repeal of 702 KAR 6:030. (Deferred from April)
702 KAR 6:040. Personnel; policies and procedures. (Deferred from April)
702 KAR 6:045. Personnel; school nutrition employee qualifications. (Deferred from April)
702 KAR 6:075. Reports and funds. (Deferred from April)
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. (Deferred from April)

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

Occupational Safety and Health
803 KAR 2:300. General.
803 KAR 2:308. Personal protective equipment.
803 KAR 2:311. Fire protection.
803 KAR 2:320. Toxic and hazardous substances.
803 KAR 2:403. Occupational health environmental controls.
803 KAR 2:417. Steel erection.
803 KAR 2:425. Toxic and hazardous substances.

ENERGY AND ENVIRONMENTAL CABINET
Department for Energy Development and Independence
Division of Oil and Gas Conservation

Division
805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.
805 KAR 1:070. Plugging wells; coal-bearing strata.
805 KAR 1:140. Directional and horizontal wells.
805 KAR 1:190. Gathering lines.
805 KAR 1:200. Administrative fees and general information associated with oil and gas permits.

PUBLIC PROTECTION CABINET
Department of Insurance

Authorization of Insurers and General Requirements
806 KAR 3.150. Standards for insurers deemed to be in hazardous financial condition.

Assets and Liabilities
806 KAR 6:100. Actualual opinion and memorandum.

Kentucky Horse Racing Commission

Thoroughbred Racing
810 KAR 1:004. Stewards.

Harness Racing
811 KAR 1:015. Race officials.

Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning

Heating, Ventilation, and Air Conditioning Licensing Requirements
815 KAR 8:041. Repeal of 815 KAR 8:040.

Division of Plumbing

Plumbing
815 KAR 20:191. Minimum fixture requirements.

Division of Building Code Enforcement

Electrical Inspector
815 KAR 35:100. Electrical continuing education procedure.

- 272 -
Certificate of Need

900 KAR 6:051. Repeal of 900 KAR 6 050.
900 KAR 6:060. Timetable for submission of certificate of need applications.
900 KAR 6:090. Certificate of Need filing, hearing and show cause hearing.
900 KAR 6.110. Certificate of Need notification of the addition or establishment of a health service, or notification of the reduction or termination of a health service, or reduction of bed capacity, or notice of intent to acquire a health facility or health service.
900 KAR 6:120. Certificate of Need pilot projects.
900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new magnetic resonance imaging units.
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 working day 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 for 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 of the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009
EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JULY 15, 2009

STATEMENT OF EMERGENCY
101 KAR 2:056E

This emergency amendment is immediately necessary to ensure that the concept of veterans’ preference, codified in KRS 18A.150 is maintained even through written testing has been virtually eliminated as a selection method in most classifications in state government. KRS 18A.150 cells for the awarding of “points” to examination scores for veterans and veterans’ dependents. The awarding of points presupposes but does not require that a written test is the selection method in all cases. On May 16, 2006, with the support of all agencies, the Personnel Cabinet eliminated the testing selection method because written examinations have not been found to requirement in KRS 18A.010 that selection in the Merit System be based on merit principles and scientific methods. The elimination of written testing and scoring for training experience in virtually all cases had the effect of removing an effective means of assuring that veterans receive fair consideration in appointment. Therefore, this emergency amendment is necessary now to ensure that veterans and their families continue to receive the preference they have earned through their dedicated military service and sacrifice. An ordinary amendment to the administrative regulation is not sufficient as there is an immediate need for agencies to comply and implement the system of Veterans’ Preference. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 8, 2009.

STEVEN L. BESHEAR, Governor
NIKKI JACKSON, Secretary
DANIEL F. EGBERS, Executive Advisor

PERSONNEL CABINET
Emergency Amendment

101 KAR 2:066. Certification and selection of eligible applicants for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.150, 18A.165

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

EFFECTIVE DATE: July 8, 2009

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

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

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

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

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

Section 3. Veterans’ Preference. (1) The following individuals shall qualify for Veterans’ Preference once a discharge certificate is submitted to the secretary which verifies honorable service and, if applicable, verifies a service-connected disability:

(a) Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge;
(b) Any current member of the active military, military reserves, or National Guard;
(c) The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
   1. Was discharged or released with an Honorable Discharge; and
   2. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran’s usual occupation at the time the spouse’s application is filed;
(d) The spouse of a veteran with a service-connected disability shall be entitled to Veterans’ Preference until the date the disabled veteran recovers;
(e) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard if the veteran:
   1. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
   2. Became permanently and totally disabled as a result of a disability sustained during the veteran’s service;
(f) The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge, including the surviving spouse of any military personnel who died while serving in the military.

1. The surviving spouse shall be entitled to Veterans’ Preference until the date of remarriage.
2. The surviving spouse shall not be entitled to Veterans’ Preference if circumstances surrounding the death of the veteran while in the Armed Forces would have been cause for a Dishonorable Discharge.

(2) For all tested classified positions, Veterans’ Preference shall be awarded by providing additional points to the entrance examination scores, once the secretary has determined the score is a passing score and has verified the required service:
(a) The following individuals shall receive five (5) additional points on entrance examination scores, but not exceeding one hundred (100) total points:
   1. Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge; or
   2. Was discharged or released with an Honorable Discharge; and
   3. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran’s usual occupation at the time the spouse’s application is filed;
2. Any current member of the active military, military reserves, or National Guard,
   (b) The following individuals shall receive ten (10) additional points on entrance examination scores, but not exceeding one hundred (100) total points:
   (1) The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
      a. Was discharged or released with an Honorable Discharge; and
      b. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed.
   (2) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and if the veteran:
      a. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
      b. Became permanently and totally disabled as a result of a disability sustained during the veteran's service or
   (3) For all non-tested classified positions, Veterans' Preference shall be awarded by the following:
      (a) Upon receipt of a request for a register, the secretary shall submit to the appointing authority the register certificate which lists all eligible applicants who meet the minimum requirements for the position. The certificate shall identify the names of eligible applicants, including internal mobility candidates, who have applied for the position and are entitled to Veterans' Preference.
      (b) The appointing authority shall offer an interview to at least five (5) of the individuals identified on the register certificate who qualify for Veterans' Preference and may offer an interview to additional candidates on the register certificate who do not qualify for Veterans' Preference.
      (c) If there are fewer than five (5) individuals identified on the register certificate who qualify for Veterans' Preference, the appointing authority shall offer an interview to all individuals identified on the register certificate who qualify for Veterans' Preference.
      (d) If an individual entitled to Veterans' Preference has been interviewed for a job vacancy in the same classification, the same work county, and by the same appointing authority within the preceding six (6) months, the agency shall not be required to offer that individual an interview.

Section 4[3]. Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

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

Section 5[4]. Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 7, 2009
FILED WITH LRC: July 18, 2009 at 4 p.m.
CONTACT PERSON: Daniel F. Egbers, Office of Legal Services, 601 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Daniel F. Egbers
(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper certification and selection of eligible applicants for appointment to state positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently establishes the requirements for certification and selection of eligibles for appointment.

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

(a) How the amendment will change this existing administrative regulation: The amendment supplements the system of Veterans' Preference in state hiring and includes the manner to award preference for non-tested, qualifying positions. The amendment is necessary to ensure that veterans and certain family members are rewarded veterans for hardship endured and to recognize the economic loss suffered while serving our Nation in uniform.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide preference for non-tested, qualifying positions. The practice of providing veterans an additional opportunity to be interviewed and considered for state employment should be promoted and adhered to by all agencies. This amendment must be codified to supplement KRS 18A.150.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.11C (1)(b) and (7). In addition, it conforms with KRS 18A.150, which is the statutory authority currently in place for implementation of a system of Veterans' Preference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the guidelines by which the Personnel Cabinet shall clearly identify and supply to employing agencies and cabinets the individuals who are entitled to receive Veterans' Preference, as well as codify the process by which Veterans' Preference will be implemented in state hiring. This clarifies the process by which KRS 18A.150 will be effectuated.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Veteran applicants are required to submit documentation which verifies their veteran status. The Personnel Cabinet is responsible for notifying the appointing authority of an individual who is entitled to Veterans' Preference, and shall indicate this qualification on the register certificate. Employing agencies are required to then offer an interview to a set number of individuals who are entitled to receive Veterans' Preference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no additional cost to each of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? It is proper and fitting that the Commonwealth of Kentucky assist those who forfeited their career opportunities and suffered economic loss while providing military service. Kentucky will be encouraging the practice of hiring veterans and employing veterans in the state workforce, which is beneficial for the Commonwealth as well as the individual veterans.

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

- 276 -
(a) Initially, his regulation, as amended, is not anticipated to
generate any new or additional costs.
(b) On a continuing basis: This regulation, as amended, is not
anticipated to generate any new or additional costs.
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation:
This regulation, as amended, is not anticipated to generate
any new or additional costs. However, if any costs are associated
with this amendment, the costs will be borne by the Personnel
Cabinet.
(d) Provide an assessment of whether any 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: This regula-
tion, as amended, is not anticipated to generate any new or addi-
tional fees or funding.
(e) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: This
regulation, as amended, is not anticipated to generate any new or
additional fees or funding.
(f) TIERING: Is tiering applied? Tiering does not apply be-
cause all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,
   service, or requirements of a state or local government (including
cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
   (including cities, counties, fire departments, or school districts)
   will be impacted by this administrative regulation? All state agencies
   with employees covered under KRS Chapter 18A.
3. Identify each state or federal statute or federal regulation
   that requires or authorizes the action taken by the administrative
   regulation: KRS 18A.030 (2), 18A.110 (1)(b) and (7) and KRS
   18A.150
4. Estimate the effect of this administrative regulation on the
   expenditures and revenues of a state or local government agency
   (including cities, counties, fire departments, or school districts) for
   the first year the administrative regulation is in effect:
   (a) How much revenue will this administrative regulation gene-
   rate for the state or local government (including cities, counties,
   fire departments, or school districts) for the first year? No revenue
   will be generated.
   (b) How much revenue will this administrative regulation gene-
   rate for the state or local government (including cities, counties,
   fire departments, or school districts) for subsequent years? No revenue
   will be generated.
   (c) How much will it cost to administer this program for the first
   year? There are no estimated additional costs to administer the
   Veterans' Preference program.
   (d) How much will it cost to administer this program for subse-
   quent years? There is no estimated cost in the administration of the
   Veterans' Preference program.

STATEMENT OF EMERGENCY

101 KAR 2:102E

This emergency amendment codifies and ensures that all
agencies in the Executive Branch will immediately provide uniform
and consistent administration of state employee health insurance
benefits under the Kentucky Employees Health Plan. As a result of
HB 406, 2008 GA, the Kentucky Employees Health Plan moved from
a pre-bill and pay model to a current bill and pay model. In short,
new employee and employer health insurance contributions are
billed and paid in the same month that the employee receives
the benefit of health insurance coverage. Currently, this regulation
provides the employer contribution for employees who "worked or
been on paid leave, other than educational leave, during any part
of the previous month." This language was consistent with the pre-
bill and pay model but not administration under the current bill and
pay model. This movement of health insurance contributions has
affected health plan eligibility. Under the current bill and pay model
health insurance eligibility and the Commonwealth/Employee con-
tribution ends at the last pay period the employee is employed with
the Commonwealth. For example, if an employee terminates, reti-
signs or retires on July 12, 2009 his or her insurance would termi-
nate on July 15, 2009, the last day of the pay period. This adminis-
tration is not consistent with the language in this regulation and the
reason for making this amendment to the regulation. This emer-
gency amendment is necessary to reflect the change in health
insurance contributions and eligibility that became effective Janu-
ary 1, 2009 with the move to current bill and pay model as required
by HB 406. An ordinary amendment to the administrative regula-
tion is not sufficient as there is an immediate need for agencies to
comply and implement. The move from a pre-bill and pay model to
a current bill and pay model was effective January 1, 2009. The
emergency amendment will be replaced by an ordinary amended
administrative regulation. The ordinary administrative regulation
was filed with the Regulations Compiler on July 15, 2009.

STEVEN L. BESHEAR, Governor
NIKKI JACKSON, Secretary of Personnel Cabinet
JOE R. COWLES, General Counsel

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:102E. Classified leave administrative regula-
tions.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394,
STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155,
EFFECTIVE: July 15, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS
18A.110(7)(g) requires the Secretary of Personnel, with the ap-
proval of the Governor, to promulgate administrative regulations
which govern annual leave, sick leave, special leaves of absence,
and for other conditions of leave. This administrative regulation
establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.
   (a) Each full-time employee shall accumulate annual leave at
   the following rate:
   
<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Annual Leave Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>1 leave day per month; 12 per year</td>
</tr>
<tr>
<td>60-119 months</td>
<td>1 1/4 leave days per month; 15 per year</td>
</tr>
<tr>
<td>120-179 months</td>
<td>1 1/2 leave days per month; 18 per year</td>
</tr>
<tr>
<td>180-239 months</td>
<td>1 3/4 days per month; 21 per year</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>2 leave days per month; 24 per year</td>
</tr>
</tbody>
</table>
   
   (b) A full-time employee shall have worked, or been on paid
   leave, other than educational leave with pay, for 100 or more regu-
   lar hours per month to accrue annual leave.
   (c) Accrued leave shall be credited on the first day of the
   month following the month in which the annual leave is earned.
   (d) In computing months of total service for the purpose of
   earning annual leave, only the months for which an employee
   earned annual leave shall be counted.
   (e) A former employee who has been rehired, except as pro-
   vided in paragraph (f) of this subsection, shall receive credit for
   prior service, unless the employee had been dismissed as a result
   of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.
   (f) An employee, who has retired from a position covered by a
   state retirement system, is receiving retirement benefits and re-
   turns to state service, shall not receive credit for months of service
   prior to retirement.
   (g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.
   (a) Annual leave shall be used in increments of hours or of
   one-quarter (1/4) hour.
   (b) Except as provided in paragraph (c) of this subsection, an
   employee who makes a timely request for annual leave shall be
   granted annual leave by the appointing authority, during the calen-
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

dar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit
(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee’s request to use annual leave is granted, unless the employee’s annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.
(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.
(e) An employee shall use annual leave for an absence on a regularly scheduled workday.
(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.
(g) An employee who is eligible for state contributions for life insurance [and health benefits] under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.
(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.
(i) Annual leave may be earned from one (1) calendar year to the next as provided in this paragraph.

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Maximum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>Thirty (30) workdays</td>
</tr>
<tr>
<td>60-119 months</td>
<td>Thirty-seven (37) workdays</td>
</tr>
<tr>
<td>120-179 months</td>
<td>Forty-five (45) workdays</td>
</tr>
<tr>
<td>180-239 months</td>
<td>Fifty-two (52) workdays</td>
</tr>
<tr>
<td>240 months and over</td>
<td>Sixty (60) workdays</td>
</tr>
</tbody>
</table>

(iii) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.
(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave.
(b) The accumulated annual leave for which he is paid shall not exceed the amount established by subsection (2)(h) of this section.
(c) Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.
(d) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.
(e) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.
(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee’s accumulated annual leave.
(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:
1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave
(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.
(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.
(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.
(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.
(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.
(g) The total service shall be verified before the leave is credited to the employee’s record.
(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.
(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.
(j) Sick leave may be accumulated with no maximum.
(k) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:
1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury.
The appointing authority may require the employee to provide a doctor’s statement certifying the employee’s inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee’s fitness to return to duty before the employee is permitted to return to work;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor’s statement certifying the employee’s need to care for a family member;
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others; or
5. Has lost by death a spouse, parent, grandparents, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days.
(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.
(c) An employee eligible for state contributions for life insurance [and health benefits] under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.
(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been paid leave, other than educational leave, during any part of the previous pay period.
(e) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.
(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.
(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.
(h) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee’s impairment by injury or illness, if:
1. The total continuous leave does not exceed one (1) year; and
2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.
   (b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.
   (c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.
   (d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.
   (e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.
   (f) If reasonable accommodation is requested, the employee shall:
      1. Inform the employer; and
      2. Upon request, provide supportive documentation from a certified professional.
   (g) An employee shall be considered to have resigned if he:
      1. Has been on one (1) year continuous sick leave without pay;
      2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;
      3. Is unable to return to his former position;
      4. Has been given prior notice by the appointing authority for a vacant, budgeted position with the same agency, for which he is qualified and is capable of performing its essential functions with or without reasonable accommodation; and
      5. Has not been placed by the appointing authority in a vacant position.
   (h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.
      (i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.
   (4) Workers' compensation.
       (a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.
       (b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.
       (c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.
       (d) Application for sick leave and supporting documentation.
       (e) An employee shall file a written application for sick leave with or without pay within a reasonable time.
       (b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.
       (c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall cause for denial of sick leave for the period of absence.
       (d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.
       (e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.
      (f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601 et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 255.
   (2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:
      (a) Complete twelve (12) months of service; and
      (b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.
   (3) Family and medical leave shall be awarded on a calendar year basis.
   (4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.
   (5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.
   (6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, upon the employee's request, the agency shall permit:
      (a) The employee to reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or
      (b) The employee to use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:
      (a) Comply with a subpoena by a court or administrative authority that is a part of the federal or state government or any political subdivision thereof; or
      (b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.
   (2) Court leave shall include necessary travel time.
   (3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.
   (4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.
   (a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.
   (b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.
   (c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.
      1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of one hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.
      2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.
      3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.
   (d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-
hour basis for hours worked in excess of the regular work schedule.
(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.
(f) The maximum amount of compensatory leave that may be earned forward from one (1) pay period to another shall be 240 hours.
(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.
(2) Reductions in compensatory leave balances.
(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.
(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.
(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee’s leave balance shall be reduced accordingly.
(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating the time at the end of the pay period, 240 hours of compensatory leave. The employee’s leave balance shall be reduced accordingly.
(e) If an employee’s prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:
   1. Exceed the number of normally prescribed hours of duty; and
   2. Do not exceed the maximum amount of compensatory time that is permitted.
(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.
(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of:
   1. Regular hourly rate of pay; or
   2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.
(2) The absence shall not be charged to leave.
(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.
(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.
(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.
(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.
(3) The absence shall not be charged against leave.
(4) An employee who is permitted or required to work during the employee’s regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.
(a) Leave may be granted for a period not to exceed twenty-four (24) months.
(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.
(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee’s work and will benefit the state.
(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.
(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.
(a) Leave shall not exceed sixty (60) working days.
(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.
(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.
(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. The notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.
(2) Unauthorized or unreported absence shall:
(a) Be considered absence without leave;
(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act, and
(c) Constitute grounds for disciplinary action.
(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 10. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of the absence reported as:
(a) Charged to annual or compensatory leave;
(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or
(c) Deferred in accordance with subsections (3) and (4) of this section.
(2) An employee who is on prerearranged annual, compensatory or sick leave shall charge leave as originally requested.
(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.
(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.
(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:
   (a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.
   (b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.
   (2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.
   (3) An employee shall request leave in advance to qualify for blood donation leave.
   (4) An employee who is deferred from donating blood shall not:
      (a) Be charged leave time for the time spent in the attempted donation; and
      (b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.
   (2) This material may be Inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 15, 2009 at 11 a.m.
CONTACT PERSON: Joe R. Cowles, Office of Legal Services, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joe R. Cowles
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation details the various types of classified leave available to state employees. This includes eligibility for the employer health insurance and life insurance contributions.
   (b) The necessity of this administrative regulation: This regulation is necessary to administrate and regulate the various types of classified leave available to state employees in a consistent and effective manner.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.039 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Personnel Cabinet in complying with KRS 18A.110, administering the various types of classified leave available to state employees.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
      (a) How the amendment will change this existing administrative regulation: As a result of HB 406, 2008 GA, the Kentucky Employees Health Plan moved from a pre-bill and pay model to a current bill and pay model. In short, now employee and employer health insurance contributions are billed and paid in the same month that the employee receives the benefit of health insurance coverage. As currently written, this regulation provides the employer contribution for an employee that "worked or been on paid leave, other than educational leave, in the previous month." This language was consistent with the pre-bill and pay model but not administration under the current bill and pay model. This change in receipt of health insurance contributions has affected health plan eligibility. Under the current bill and pay model health insurance eligibility and the Commonwealth/employer contribution ends at the last pay period the employee is employed with the Commonwealth. For example, if an employee terminates, resigns or retires on July 12, 2009 his or her insurance would terminate on July 15, 2009, the last day of the pay period. The existing regulation language is not consistent with the collection of health insurance contributions and administration of the Kentucky Employees Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and other individuals subject to the provisions of 101 KAR 2-102 will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Personnel Cabinet, Department of Human Resources Administration and Department of Employee Insurance will implement this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to this amendment is consistent administration of the Kentucky Employee Health Plan and classified leave provisions as a result of the move from a pre-bill and pay to a current bill and pay model was effective in January 1, 2009 pursuant to HB 406.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: There are no costs associated with implementing this amendment to the administrative regulation.
   (b) On a continuing basis: There are no costs on a continuing basis of implementing this administrative regulation amendment.

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

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

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

(9) TIERING: Is tiering applied? No, all merit, classified employees will be treated the same.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All entities that are subject to KRS Chapter 18A and its associated regulations will be impacted by this amendment.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110, 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 U.S.C. 201, et seq., 2601 et seq.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 administrative regulation amendment 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? The administrative regulation amendment will not generate any revenue.
   (c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation amendment initially are believed to be zero.
   (d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation amendment on a continuing basis are believed to be zero.

STATEMENT OF EMERGENCY

101 KAR 3:015E

This emergency amendment codifies and ensures that all agencies in the Executive Branch will immediately provide uniform and consistent administration of state employee health insurance benefits under the Kentucky Employees Health Plan. As a result of HB 406, 2008 GA, the Kentucky Employees Health Plan moved from a pre-bill and pay model to a current bill and pay model. In short, now employee and employer health insurance contributions are billeted and paid in the same month that the employee receives their health insurance coverage. This amendment provides the employer contribution for an employee that "worked or been on paid leave, other than educational leave, during any part of the previous month." This language was consistent with the pre-bill and pay model but not administration under the current bill and pay model. This movement of health insurance contributions has affected health plan eligibility. Under the current bill and pay model health insurance eligibility and the Commonwealth/employer contribution ends at the last pay period the employee is employed with the Commonwealth. For example, if an employee terminates, resigns or retires on July 12, 2009 his or her insurance would terminate on July 15, 2009, the last day of the pay period. This administration is not consistent with the language in this regulation and the reason for making this amendment to the regulation. This emergency amendment is necessary to reflect the change in health insurance contributions and eligibility that became effective January 1, 2009 with the move to current bill and pay model as required by HB 406. An ordinary amendment to the administrative regulation is not sufficient as there is an immediate need for agencies to comply and implement. The move from a pre-bill and pay model to a current bill and pay model was effective January 1, 2009. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 2009.

STEVEN L. BESHEAR, Governor
NIKKI JACKSON, Secretary

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 3:015E. Leave administrative regulations for the unclassified service.

EFFECTIVE: July 15, 2009.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.115(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.
   (a) Each full-time employee shall accumulate annual leave at the following rate:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Annual Leave Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>1 day leave per month; 12 per year</td>
</tr>
<tr>
<td>60-119 months</td>
<td>1/4 day leave per month; 15 per year</td>
</tr>
<tr>
<td>120-179 months</td>
<td>1/2 day leave per month; 18 per year</td>
</tr>
<tr>
<td>160-239 months</td>
<td>3/4 days per month; 21 per year</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>2 days per month; 24 per year</td>
</tr>
</tbody>
</table>

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been retired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of the section, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request for annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regular scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for health insurance under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall...
have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be earned from one (1) calendar year to the next as provided in this paragraph:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Maximum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 month</td>
<td>Thirty (30) workdays</td>
</tr>
<tr>
<td>60-119 months</td>
<td>Thirty-seven (37) workdays</td>
</tr>
<tr>
<td>120-179 months</td>
<td>Forty-five (45) workdays</td>
</tr>
<tr>
<td>180-239 months</td>
<td>Fifty-two (52) workdays</td>
</tr>
<tr>
<td>240 months and over</td>
<td>Sixty (60) workdays</td>
</tr>
</tbody>
</table>

(ii) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(ii)(i) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed an amount established by subsection (2)(i) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who retires to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or as laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been retired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accumulated sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others; or
5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(i) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and
2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an intermittent employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority
shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:
1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:
1. Has been on one (1) year continuous sick leave without pay;
2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;
3. Is unable to return to his former position;
4. Has been given prompt consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers’ compensation.
(a) An absence is due to illness or injury for which workers’ compensation benefits are received, accumulated sick leave may be used to maintain regular full salary
(b) If paid sick leave is used to maintain regular full salary, workers’ compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.
(c) The employee’s sick leave shall be immediately reinstated to the extent that workers’ compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.
(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.
(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.
(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.
(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee’s incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents

Section 3. Family and Medical Leave (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601 et seq, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:
(a) Completed twelve (12) months of service; and
(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:
(a) The employee’s leave balance has been exhausted; or
(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:
(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof;
(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.
(2) Court leave shall include necessary travel time.
(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.
(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.
(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.
(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.
(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of one hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.
2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work-week following receipt of the election.
3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.
(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.
(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.
(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.
(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.
(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an em-
ployee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) if an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; or
2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the United States Army National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election duty does not exceed ten (10) hours.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Absences Due to Adverse Weather. (1) An employee, who is designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervi-
VOLUME 36, NUMBER 2 - AUGUST 1, 2009

sor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:
(a) Be charged leave time for the time spent in the attempted donation; and
(b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

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

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 15, 2009 at 11 a.m.
CONTACT PERSON: Joe R. Cowles, Office of Legal Services, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:
(a) What the administrative regulation does: This regulation details the various types of uncompensated leave available to state employees. This includes eligibility for the employer health insurance and life insurance contributions.
(b) The necessity of this administrative regulation: This regulation is necessary to administer and regulate the various types of uncompensated leave available to state employees in a consistent and effective manner.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 grants the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation assists the Personnel Cabinet in complying with KRS 18A.110, administering the various types of uncompensated leave available to state employees.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: As a result of HB 406, 2008 GA, the Kentucky Employees Health Plan moved from a pre-bill and pay model to a current bill and pay model. In short, now employees and employer health insurance contributions are billed and paid in the same month that the employee receives the benefit of health insurance coverage. As currently written, this regulation provides the employer contribution for an employee that "worked or been on paid leave, other than educational leave, during any part of the previous month." This language was consistent with the pre-bill and pay model but not administration under the current bill and pay model. This change in receipt of health insurance contributions has affected health plan eligibility. Under the current bill and pay model health insurance eligibility and the Commonwealth/employer contribution ends at the last pay period the employee is employed with the Commonwealth. For example, if an employee terminates, resigns or retires on July 12, 2009 his or her insurance would terminate on July 15, 2009, the last day of the pay period. The existing regulation language is not consistent with the collection of health insurance contributions and administration of the Kentucky Employees Health Plan.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to the Kentucky Employees Health Plan administration as a result of the change from pre-bill and pay to a current bill and pay model was effective in January 1, 2009.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment will allow for consistent and effective administration of the uncompensated leave regulation and administration of the Kentucky Employees Health Plan.
(d) How the amendment will assist in the effective administration of the statute: This amendment will allow for consistent and effective administration of the uncompensated leave regulation and administration of the Kentucky Employees Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A uncompensated employees and other individuals subject to the provisions 101 KAR 3.015 will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Personnel Cabinet, Department of Human Resources Administration and Department of Employee Insurance will implement this regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to this amendment is consistent administration of the Kentucky Employee Health Plan and uncompensated leave provisions as a result of the move from a pre-bill and pay to a current bill and pay model was effective in January 1, 2009 pursuant to HB 406.
(d) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no costs associated with implementing this amendment to the administrative regulation.
(b) On a continuing basis: There are no costs on a continuing basis of implementing this administrative regulation amendment.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding required for implementation.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation amendment will not require an increase in funding or fees.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly or indirectly increase any fees.
(f) TIERING: Is tiering applied? No, non-merit, uncompensated employees will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All entities that are subject to KRS Chapter 18A and its associated regulations will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110, 18A.030, 18A.110, 18A.110, 61.354, 344.030, 29 U.S.C. 201, et. seq., 2601, et. seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(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 administrative regulation amendment will not generate any revenue.
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation amendment initially are believed to be zero.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation amendment on a continuing basis are believed to be zero.

STATEMENT OF EMERGENCY
806 KAR 17:391E

Pub.L. 110-233 §104(d), the Genetic Information Nondiscrimination Act of 2008 (GINA) requires all states to adopt the amended NAIC Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act no later than July 1, 2009. Additionally the Medicare Improvements for Patients and Provider Act (MIPPA), Pub.L. 110-275 §104, requires states to implement the new NAIC Model number 651 to implement the Medicare Supplement Insurance Minimum Standards Model Act in order to change the Medicare Supplement standard benefit plans no later than September 24, 2009. If state law does not conform to these federal requirements, the Secretary of Health and Human Services may make a determination that Kentucky law is not in compliance with federal requirements and pre-empts the state's ability to regulate Medicare Supplement insurance products. Kentucky's current Medicare supplement regulations must be repealed and replaced by the new standards. In accordance with KRS 13A.310(1)(a), this emergency regulation is one that must be placed into effect immediately in order to meet a deadline established by federal law. In order to repeal the current Medicare Supplement provisions in 806 KAR 17.390, 17.400, 17.410, 17.420, and 17.430 and to implement these new federal law mandates as explained in paragraph (1) before the GINA deadline of July 1, 2009, it is necessary to promulgate this emergency regulation. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 26, 2009. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT VANCE, Secretary
SHARON P. CLARK, Commissioner

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance (Emergency Repealer)


RELATES TO: KRS 13A.310, KRS 304-14-500-304.14-550
STATUTORY AUTHORITY: KRS 13A.310, 304.2-110(1); EO 2009-335
EFFECTIVE: June 26, 2009
NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-335, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 17.390, 17.400, 17.410, 17.420 and 17.430, which are no longer necessary "as an aid to the enforcement of any provision of this code" as stated in KRS 304.2-110(1). 806 KAR 17.390, 17.400, 17.410, 17.420 and 17.430 set forth the minimum requirements relating Medicare supplement insurance policies. These minimum requirements have been combined into a new administrative regulation, therefore these regulations are no longer necessary. This administrative regulation will repeal outdated and unnecessary administrative regulations.

Section 1. The following administrative regulations are hereby repealed:
(1) 806 KAR 17:390, Benefits and disclosures in Medicare supplement insurance policies;
(2) 806 KAR 17:400, Marketing and sales practices in Medicare supplement insurance policies;
(3) 806 KAR 17:410, Claims payment practices in Medicare supplement insurance policies;
(4) 806 KAR 17:420, Rates, premiums and loss ratio requirements in Medicare supplement insurance policies; and
(5) 806 KAR 17:430, Reporting requirements in Medicare supplement insurance policies.

SHARON P. CLARK, Commissioner
ROBERT VANCE, Secretary
APPROVED BY AGENCY: June 10, 2009
FILED WITH LRC: June 26, 2009 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2009, at 9:30 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by five (5) 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 August 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: Melea Rivera, Health and Life Division, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-5088, 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 repeals 806 KAR 17:390, 17:400, 17:410, 17:420 and 17:430.
(b) The necessity of this administrative regulation: This administrative regulation will repeal five (5) administrative regulations contained in 806 KAR Chapter 17 that are outdated and unnecessary to the regulation of insurance as these administrative regulations were replaced with a new version.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. 806 KAR 17:390, 17:400, 17:410, 17:420 and 17:430 all relate to minimum requirements for Medicare supplement policies and these requirements are now found in 806 KAR 17:570. These regulations are no longer necessary and the Department of Insurance wishes to repeal these administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove administrative regulations that are no longer needed.
(e) Section (1) of this an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? This is not an amendment.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A.

- 287 -
(d) How the amendment will assist in the effective administration of the statutes N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 90 insurers with health lines of authority who offer or renew Medicare supplement or select policies.

(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: Insurers will not be required to take any action as a result of the promulgation of this repeal administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurers will not incur any costs as a result of the promulgation of this repeal administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repeal administrative regulation does not require compliance on the part of insurers.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Department of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Department of Insurance.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation repeals five (5) regulations contained in 805 KAR Chapter 17.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**

805 KAR 17:570E

Pub.L. 110-233 §104(d), the Genetic Information Nondiscrimination Act of 2008 (GINA) requires all states to adopt the amended NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act no later than July 1, 2009. Additionally the Medicare Improvements for Patients and Providers Act (MIPPA), Pub.L. 110-275 §104, requires states to implement the new NAIC Model number 651 to Implement the Medicare Supplement Insurance Minimum Standards Model Act in order to change the Medicare Supplement standard benefit plans no later than September 24, 2009. If state law does not conform to these federal requirements, the Secretary of Health and Human Services may make a determination that Kentucky law is not compliant with federal requirements and pre-empt the state’s ability to regulate Medicare Supplement Insurance products. In accordance with KRS 13A.310(1)(a), this emergency regulation is one that must be placed into effect immediately in order to meet a deadline established by federal law. In order to implement these federal law mandates as explained in paragraph (1) before the GINA deadline of July 1, 2009, it is necessary to promulgate this emergency regulation. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 26, 2009. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

ROBERT VANCE, Secretary

SHARON P. CLARK, Commissioner

**PUBLIC PROTECTION CABINET**

Department of insurance

Division of Health Insurance Policy and Managed Care

(New Emergency Administrative Regulation)

805 KAR 17:570E. Minimum standards for Medicare supplement insurance policies and certificates.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150, EO 2009-535

EFFECTIVE: June 26, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insur-
Section 1. Definitions. (1) "Applicant" is defined by KRS 304.14-500(1).

(2) "Bankruptcy" means a petition for declaration of bankruptcy filed or filed against a Medicare Advantage organization that is not an insurer and has ceased doing business in the state.

(3) "Certificate" is defined by KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is defined or issued for delivery by the insurer.

(5) "Commissioner" means Commissioner of Insurance.

(6) "Compensation" means monetary or non-monetary remuneration of any kind relating to the sale or renewal of the policy or certificate including bonuses, gifts, prizes, awards, and finder's fees.

(7) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select Insurer or its network providers.

(8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(9) "Creditable coverage" is defined by KRS 304.17A-005(5).

(10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 of the Employee Retirement Income Security Act.

(11) "Family member" means, with respect to any individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(12) "Genetic information" means except for information relating to the sex or age:

(a) With respect to any individual:
   1. Information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual; or
   2. Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual;

(b) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by a pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member.

(13) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(14) "Genetic test":

(a) Means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes;

(b) Does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

(c) An analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that may reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(15) "Grievance" means dissatisfaction expressed in writing by any individual under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select Insurer or its network providers.

(16) "Health care expenses" shall be defined as expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(17) "Insolvency" is defined by KRS 304.33-030(18).

(18) "Insurer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(19) "Insurer of a Medicare supplement policy or certificate" means an insurer or third-party administrator, or other person acting for or on behalf of the insurer.

(20) "Medicare" is defined by KRS 304.14-500(4).

(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395ww(d)(3)(B)(1), and includes:

(a) A coordinated care plans, which provide health care services, including the following:
   1. A health maintenance organization plan, with or without a point-of-service option;
   2. A plan offered by provider-sponsored organization; and
   3. A preferred provider organization plan.

(b) A medical savings account plan coupled with a contribution into a Medicare Advantage plan medical savings account; and
(c) A Medicare Advantage private fee-for-service plan.

(22) "Medicare Select Insurer" means an Insurer offering, or seeking to offer, a Medicare Select policy or certificate.

(23) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(24) "Medicare supplement policy" is defined by KRS 304.14-500(3).

(25) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the insurer to provide benefits insured under a Medicare Select policy.

(26) "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992.

(27) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(28) "Service area" means the geographic area approved by the commissioner within which an insurer is authorized to offer a Medicare Select policy.

(29) "Structure, language, and format" means style, arrangement and overall content of a benefit.

(30) "Underwriting purposes" means,

(a) Rules for, or determination of, eligibility, including enrollment of a continued eligible for benefits under the policy;

(b) The computation of premium or contribution amounts under the policy;

(c) The application of any pre-existing condition exclusion under the policy; and

(d) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(31) "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan," or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after January 1, 1992, and prior to June 1, 2010, and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the insurer at the request of the insured.

(32) "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan," or "2010 plan" means a group or individual policy of Medicare supplement insurance issued on or after June 1, 2010.

(33) "Policy form" means the form on which the policy is delivered or issued for delivery by the Insurer.

(34) "Secretary" means the Secretary of the United States Department of Health and Human Services.
as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to this section.

(1) "Accident", "accidental injury", or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words including "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that Injuries shall not include Injuries for which benefits are provided or available under any Workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless the definition is prohibited by law.

(2) "Activities of daily living" include bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(3) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four hour period of services provided by a care provider is one visit.

(4) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(5) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home care agency or referred by a licensed referral agency or licensed nurses registry.

(6) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(7) "Emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(8) "Home" shall mean any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(9) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(10) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constututed or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(11) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(12) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(13) "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(14) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the Insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under workers' compensation, occupational disease, employer's liability, or similar law.

Section 6. Policy Provisions. (1) Except for preexisting condition clauses as described in Sections 7(2)(a), Section 8(1)(a), and Section 8.1(1)(a) of this administrative regulation, a
policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

2. A Medicare supplement policy or certificate shall not:
(a) Contain a probationary or elimination period; or
(b) Use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

3. A Medicare supplement policy or certificate in force in the state shall not contain benefits that duplicate benefits provided by Medicare.

4. (a) Subject to Sections 7(2)(d), (e) and (g), and 6(1)(c) and (e) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2005, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:
1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual’s coverage under a Part D plan; and
2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992.

1. A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards, which shall not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

2. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than section 5(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A "non-cancellable," "guaranteed renewable," or "non-cancellable and guaranteed renewable" Medicare supplement policy shall not:
1. Provide for termination of coverage of a spouse solely because the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
2. Be cancelled or non-renewed by the insurer solely on the grounds of deterioration of health.

(e) 1. Except as authorized by the commissioner, an insurer shall neither cancel or non-renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (e) of this subsection, the insurer shall offer certificate holders an individual Medicare supplement policy with at least the following choices:

a. An individual Medicare supplement policy currently offered by the insurer having comparable benefits to those contained in the terminated group Medicare supplement policy; and
b. An individual Medicare supplement policy which provides the benefits as are required to meet the minimum standards as defined in Section 8.1(2) of this administrative regulation.

3. If membership in a group is terminated, the insurer shall:
(a) Offer the certificate holder the conversion opportunities described in Subparagraph 2 of this paragraph; or
(b) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination, and coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

5. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Benefits of Medicare Part D benefits will not be considered in determining a continuous loss.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

7. Minimum Benefit Standards:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare’s lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B;

(f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 8. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued or Delivered on or After January 1, 1992, and Prior to June 1, 2010. The following standards apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992, and prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

-291-
(1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than section 5(13).

(b) A Medicare supplement policy or certificate shall not:
   1. Contain a probationary or elimination period; or
   2. Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable.
   1. The Insurer shall not cancel or non-renew the policy solely on the ground of health status of the individual.
   2. The Insurer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 8(1)(a)(ii) of this section, the insurer shall offer certificate holders an option to choose an Individual Medicare supplement policy which:
   a. Provides for continuation of the benefits contained in the group policy;
   b. Provides for benefits that meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:
   a. Offer the certificate holder the conversion opportunity described in Subsection 8(1)(a)(ii) of this section, or
   b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to the persons covered under the terms of the new policy before the date of suspension. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(l) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the Insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the date of termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b) and is covered under a group health plan, as defined in 1862 (b)(1)(A)(i)(A)(v) of the Social Security Act, 42 U.S.C. 1395Y(b)(1)(A)(v).
   If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstatement of coverage as described in Subparagraphs 2 and 3:
   a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;
   b. Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension.
   If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall provide substantially equivalent coverage to the coverage in effect before the date of suspension; and
   c. Shall provide for classification of premiums on at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(h) If an insurer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from its or her 1990 Standardized plan, as described in Section 9 of this administrative regulation, to a 2010 Standardized plan, as described in Section 9.1 of this administrative regulation, the offer and subsequent exchange shall comply with the following requirements:

1. An insurer need not provide justification to the commissioner if the Insured replaces a 1990 Standardized policy or certificate with an issue age-rated 2010 Standardized policy or certificate at the Insured's original issue age. If an Insured's policy or certificate to be replaced is priced on an issue age rate schedule at offer, the rate charged to the Insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the Insured. The method proposed to be used by an Insurer shall be filed with the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:007.

2. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

3. An insurer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the Insured, but may apply pre-existing condition limitations of no more than sixty (60) months in any additional benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

4. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

5. An insurer may offer its policyholders or certificate holders the following exchange options:
   a. Selected existing Plans; or
   b. Certain new Plans for a particular existing Plan.

(2) Standards for Basic (Core) Benefits Common to Benefit Plans A to J. Every Insurer shall make available a policy or certificate including at a minimum the following basic "core" package of
benefits to each prospective insured. An insurer may make available to prospective insurers any of the other Medicare Supplement insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days.

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and

(e) Coverage for the coinsurance amount or for hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(f) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this administrative regulation:

(a) Medicare Part A Deductible, which is coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(c) Medicare Part B Deductible, which is coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty (80) Percent of the Medicare Part B Excess Charges, which is coverage for eighty (80) percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(e) 100 Percent of the Medicare Part B Excess Charges, which is coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Basic Outpatient Prescription Drug Benefit which is coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(g) Extended Outpatient Prescription Drug Benefit, which is coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care rendered in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000.

(i) 1. Preventive Medical Care Benefit, which is coverage for the following preventive health services not covered by Medicare:

   a. An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph 2 of this paragraph and patient education to address preventive healthcare measures.

   b. Preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

   2. Reimbursement shall be for the actual charges up to 100 percent of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

   (i) At-Home Recovery Benefit, which is coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

   1. Coverage Requirements and Limitations.

   a. At-home recovery services provided shall be primarily services which assist in activities of daily living.

   b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

   c. Coverage is limited:

   (i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

   (ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit;

   (iii) $1,600 per calendar year;

   (iv) Seven (7) visits in any one (1) week;

   (v) Care furnished on a visiting basis in the insured's home;

   (vi) Services provided by a care provider;

   (vii) At-home recovery visits while the insured is covered under the policy or certificate and not excluded;

   (viii) At-home recovery visits provided during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

   3. Coverage is excluded for:

   a. Home care visits paid for by Medicare or other government programs;

   b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

   (4) Standards for Plans K and L.

   (a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

   1. Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period.

   2. Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

   3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days.

   4. Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph.

   5. Skilled Nursing Facility Care, which is coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;

   6. Hospice Care, which is coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and hospice care

- 293 -
until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph; 7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(c)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2), until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph; 8. Except for coverage provided in Subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph; 9. Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and 10. Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary. (b) Standardized Medicare supplement benefit plan "L" shall consist of the following: 1. The benefit described in Paragraphs (a)(1), (2), (3), and (9); 2. The benefit described in Paragraphs (a)(4), (5), (6), (7), and (8), but subjecting to a 10 percent (75) percent for fifty (50) percent; and 3. The benefit described in Paragraph (a)(10), but substituting $2000 for $4000. Section 8.1. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plans or Certificates Issued for Delivery on or After June 1, 2010. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards. An insurer shall not offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Sections 8 and 9 of this administrative regulation. (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation. (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with changes. (d) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence specified for termination of coverage of the insured, other than the nonpayment of premium. (e) Each Medicare supplement policy shall be guaranteed renewable. 1. The insurer shall not cancel or non-renew the policy solely on the ground of health status of the individual. 2. The insurer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation. 3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 8.1(1)(e)(3) of this section, the insurer shall offer certificate holders an individual Medicare supplement policy which, at the option of the certificate holder: a. Provides for continuation of the benefits contained in the group policy; or b. Provides for benefits that meet the requirements of this Subsection. 4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall: a. Offer the certificate holder the conversion opportunity described in Subsection 8.1(1)(e)(3) of this Section; or b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy. 5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced. (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned on the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss. (g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. §1952 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance. 2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement. 3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. §1395ss(q)(5)(A), at the request of the policyholder if the policyholder is entitled to benefits under Section 225 (b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1882 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan. 4. Reinstatement of coverage as described in Subparagraphs 2 and 3 of this paragraph shall: a. Not provide for any waiting period with respect to treatment of preexisting conditions; b. Provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and c. Provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended. (2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, High Deductible F, G, M and N. Every insurer of Medicare supplement insurance benefit plans shall make available a policy or certificate including,
at a minimum, the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days.

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2).

(e) Coverage for the coinsurance amount, or for hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(f) Hospice Care, which is coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, High Deductible F, G, M, and N as provided by Section 9.1 of this Administrative regulation.

(a) A Medicare Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B excess charges, which is coverage for the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000.


(1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 9.2 of this administrative regulation.

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in Kentucky, except as may be permitted in Subsection 9.7(7) and in Section 10 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this section and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8(2) and 8(3), or 8(4) and list the benefits in the order shown in Section 8.

(4) An insurer may use an addition to the benefit plan designations required in Subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as described in Section 8(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible as described in Section 8(3)(a).

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (b), (c), and (h) respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: The core benefit, as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as described in Sections 8(3)(a), (b), (h), and (i) respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as described in Sections 8(3)(a), (b), (h), and (i) respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (b), (c), (e), and (h) respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses include the core benefits as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1,500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as described in Section 8(3)(a), (b), (d), (h), and (i) respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (b), (f), and (h) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.
(j) Standardized Medicare supplement benefit Plan 'I' shall consist of only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as described in Section 8(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The outpatient prescription drug benefit shall not be included in an Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan 'J' shall consist of only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 8(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(I) Standardized Medicare supplement benefit high deductible Plan 'J' shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan 'J' deductible. The covered expenses include the core benefits as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 8(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The annual high deductible Plan 'J' deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan 'J' policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.


(a) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 8(4)(a).

(b) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 8(4)(b).

(7) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurers, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 9.1 Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After June 1, 2010. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Section 8 and 9 of this administrative regulation.

(1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as described in Section 8.1(2) of this administrative regulation.

(b) If an insurer makes available any of the additional benefits described in Section 8.1(3), or offers standardized benefit Plans K or L, as described in Sections 8.1(3)(h) and (i) of this administrative regulation, then the insurer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subsection (1) of this section, a policy form or certificate form containing either standardized benefit Plan C, as described in Section 9.1(5)(c) of this administrative regulation, or standardized benefit Plans F, as described in Section 9.1(5)(e) of this regulation.

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall not be offered for sale in this state, except as may be permitted in Section 9.1(6) and in Section 10 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, design, and format to the standard benefit plans listed in this Subsection and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8.1(2) and 8.1(3) of this administrative regulation; or, in the case of plans K or L, in Sections 8.1(3)(h) or (i) of this administrative regulation and list the benefits in the order shown.

(4) In addition to the benefit plan designations required in Subsection (3), an insurer may use other designations if approved by the commissioner.

(5) 2010 Standardized Benefit Plans:

(a) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as described in Section 8.1(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefits as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part B deductible as described in Section 8.1(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefits as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part B deductible and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), and (f) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefits as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facilities care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), (e) and (f) of this administrative regulation, respectively.

(e) Standardized Medicare supplement benefit Plan E shall include only the following: The basic (core) benefits as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facilities care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), (e), and (f) of this administrative regulation, respectively.

(f) Standardized Medicare supplement benefit Plan F shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in Paragraph (j) of this subsection.

1. The basic (core) benefits as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), (e), and (f) of this administrative regulation, respectively.

2. The annual deductible in High Deductible Plan F shall consist of out-of-pocket expenses, other than premiums, for services...
covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basic for the deductible shall be $1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten ($10) dollars.

(g) Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as described in Section 8.1(2) of this regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (e), and (f), respectively.

(h) Standardized Medicare supplement Plan K is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. Part A Hospital Coinurance: Coverage of 100 percent of the Part A hospital coinurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;
2. Part A Hospital Coinurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;
3. Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A Medicare Part A deductible amounts for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare Part A standard of payment, subject to a lifetime maximum benefit of an additional $35,000;
4. Medicare Part B Deductible: Coverage for fifty (50) percent of the Medicare Part B deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
5. Skilled Nursing Facility Care: Coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in any Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
6. Hospice Care: Coverage for fifty (50) percent of costs shared for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
7. Blood: Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, as described under 42 C.F.R. 409.87(a)(2) unless replaced in accordance with 42 C.F.R. 409.87(c)(2) until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
8. Part B Cost Sharing: Except for coverage provided in Subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
9. Part B Preventive Services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible and;
10. Cost Sharing After Out-of-Pocket Limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate Inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as described in Section 8.1(2) of this administrative regulation, plus fifty (50) percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(b), (c), and (f) of this administrative regulation, respectively.

(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), and (f) of this administrative regulation, respectively, with co-payments in the following amounts:

1. The lesser of twenty ($20) dollars or the Medicare Part B coinsurance or co-payment for each covered health care provider office visit, including visits to medical specialists; and
2. The lesser of fifty ($50) dollars or the Medicare Part B coinsurance or co-payment for each covered emergency room visit, hospitalization co-payment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that complies with the applicable standards of this section. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not available, and are cost-effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Section 10. Medicare Select Policies and Certificates

(1)(a) This section shall apply to Medicare Select policies and certificates, as described in this section.

(b) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The commissioner may authorize an insurer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, 42 U.S.C. 1395ss and 42 U.S.C. 1320c-3, if the commissioner finds that the insurer has satisfied all of the requirements of this regulation.

(3) A Medicare Select insurer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(4) A Medicare Select insurer shall file a proposed plan of operation with the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:
1. Covered services may be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area, Geographic availability shall not be less than sixty (60) miles from the insurance's place of residence.
2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:
   a. To deliver adequately all services that are subject to a restricted network provision; or
   b. To make appropriate referrals.

- 297 -
3. There are written agreements with network providers describing specific responsibilities.
4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.
5. If covered services are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.
(b) A statement or map providing a clear description of the service area.
(c) A description of the grievance procedure to be utilized.
(d) A description of the quality assurance program, including:
1. The formal organizational structure;
2. The written criteria for selection, retention and removal of network providers; and
3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.
(e) A list and description, by specialty, of the network providers.
(f) Copies of the written information proposed to be used by the insurer to comply with Subsection (8) of this section.
(g) Any other information requested by the commissioner.
(5) A Medicare Select Insurer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after sixty (60) days unless specifically disapproved.
(b) An updated list of network providers shall be filed with the commissioner at least quarterly.
(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:
(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition;
(b) It is not reasonable to obtain services through a network provider; or
(c) There are no network providers available within sixty (60) miles of the insured's place of residence.
(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.
(8) A Medicare Select insurer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at a minimum the following:
(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:
1. Other Medicare supplement policies or certificates offered by the insurer; and
2. Other Medicare Select policies or certificates.
(b) A description, which shall include address, phone number and hours of operation of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.
(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.
(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.
(e) A description of limitations or exclusions to restricted network provisions and other network providers.
(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate offered by the insurer.
(g) A description of the Medicare Select insurer's quality assurance program and grievance procedure.
(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select Insurer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection (8) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.
(10) A Medicare Select Insurer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.
(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.
(b) Upon issuance of the policy or certificate, the insurer shall provide detailed information to the policyholder describing how a grievance may be registered with the insurer.
(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.
(d) If a grievance is found to be valid, corrective action shall be taken promptly.
(e) All concerned parties shall be notified about the results of a grievance.
(f) The insurer shall report no later than each March 31st to the commissioner regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature and resolution of grievances.
(11) Upon initial purchase, a Medicare Select Insurer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplemental policy or certificate offered by the insurer.
(12) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select Insurer shall make available to the individual insured the opportunity to purchase a Medicare supplemental policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The insurer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.
(b) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:
1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.
(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section shall be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.
(a) Each Medicare Select Insurer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplemental policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The Insurer shall make these policies and certificates available without requiring evidence of insurability.
(b) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:
1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.
(14) A Medicare Select Insurer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.
Section 11. Open Enrollment
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(1)(a) An insurer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant if
1. An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older, and
2. The applicant is enrolled for benefits under Medicare Part B.
(b) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age
(2) (a) If an applicant qualifies under Subsection (1) of this section and submits an application during the time period referenced in Subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the insurer shall not exclude benefits based on a preexisting condition.
(b) If the applicant qualifies under Subsection (1) of this section and submits an application during the time period referenced in Subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the insurer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.
(3) Except as provided in Subsection (2) and Sections 12 and 23 of this administrative regulation, Subsection (1) of this Section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was diagnosed during the six (6) months before the coverage became effective.

(1) Guaranteed Issue:
(a) Eligible persons are those individuals described in Subsection (2) of this section who seek to enroll under the policy during the period specified in Subsection (3) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.
(b) With respect to eligible persons, an insurer shall not:
1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection (5) of this section that is offered and is available for issuance to new enrollees by the insurer;
2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and
3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.
(2) An eligible person shall include the following:
(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all the supplemental health benefits to the individual;
(b) An individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and
1. The individual is sixty (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee, and there are circumstances similar to those described in subparagraph 2 that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan; or
2. Any of the following circumstances apply:
   a. The certification of the organization or plan has been terminated,
   b. The organization has terminated or discontinued providing the plan in the area in which the individual resides;
   c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, 42 U.S.C. 1395w-21(g)(3)(B), if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, 42 U.S.C. 1395w-26, or the plan is terminated for all individuals within a residence area;
   d. The individual demonstrates, in accordance with guidelines established by the Secretary, that:
      i). The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards; or
      ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or
      iii) The individual meets the other exceptional conditions as the Secretary may provide.
(c) 1. An individual is enrolled with:
   a. An eligible organization under a contract with Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare costs;
   b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;
   c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A), regarding health care prepayment plan;
   d. An organization under a Medicare Select policy; and
   2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under subsection (2)(b) of this section.
(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:
1. The Insolvency of the insurer or bankruptcy of the non-insurer organization; or
2. The involuntary termination of coverage or enrollment under the policy;
3. The insolvency of the policy substantially violated a material provision of the policy; or
4. The insurer, or an agent or other entity acting on the insurer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;
(e) 1. An Individual that was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any of the following:
   a. A Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare;
   b. An eligible organization under a contract with Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;
   c. A similar organization operating under demonstration project authority;
   d. A PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; or
   e. A Medicare Select policy; and
   2. The subsequent enrollment under subparagraph (e)(1) of this subsection is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act, 42 U.S.C. 1395w-21(e); or
(f) An Individual who, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in:
1. A Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; and
2. Disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment; or
(g) An individual that:
1. Enrolls in a Medicare Part D plan during the initial enrollment period;
2. Upon enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and
3. Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection (5)(d) of this section.
(3) Guaranteed Issue Time Periods.
(a) For an individual described in Subsection (2)(a) of this section, the guaranteed issue period shall:
1. Begin on the later of the date:
a. The individual receives a notice of termination or cessation of all supplemental health benefits, or, if it is not received, notice that a claim has been denied because of a termination or cessation; or
b. That the applicable coverage terminates or ceases; and
2. End sixty-three (63) days thereafter;
(b) For an individual described in Subsection (2)(b), (c), (e) or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;
(c) For an individual described in Subsection (2)(d) of this section, the guaranteed issue period begins on the date that is sixty-three (63) days after the effective date of the disenrollment and shall end on the date that is sixty-three (63) days after the effective date;
(d) For an individual described in Subsection (2)(g) of this section, the guaranteed issue period shall begin on the date the individual receives notice pursuant to Section 1862(v)(2)(B) of the Social Security Act, 42 U.S.C. 1395s(v)(2)(B), from the Medicare supplement insurer during the sixty-day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual’s coverage under Medicare Part D; and
(f) For an individual described in Subsection (2) of this section but not described in the preceding paragraphs of this Subsection, the guaranteed issue period shall begin on the effective date of disenrollment and shall end on the date that is sixty-three (63) days after the effective date.
(4) Extended Medigap Access for Interrupted Trial Periods.
(a) For an individual described in Subsection (2)(e) of this section whose enrollment with an organization or provider described in Subsection (2)(e)(1) of this section is involuntary terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection(2)(e) of this section;
(b) For an individual described in Subsection (2)(f) of this section whose enrollment with a plan or in a program described in Subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(f) of this section; and
(c) For purposes of Subsections (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in Subsection (2)(e)(1) of this section, or with a plan or in a program described in Subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with an organization, provider, plan, or program.
(5) Products to Which Eligible Persons Are Entitled. The Medicare supplement policy to which eligible persons are entitled under:
(a) Section 122(2)(a), (b), (c) and (d) of this administrative regulation is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L offered by any insurer.
(b) Subject to Subparagraph 2 of this paragraph, a person eligible pursuant to Section 122(2)(e) of this administrative regulation is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same insurer, or, if not so available, a policy described in Paragraph (a) of this subsection;
2. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:
(a) The policy available from the same insurer but modified to remove outpatient prescription drug coverage; or
(b) At the election of the policyholder, an A, B, C, F, high deductible F, K, or L policy that is offered by any insurer;
(c) Section 122(2)(e) of this administrative regulation shall include any Medicare supplement policy offered by any insurer;
(d) Section 122(2)(g) of this administrative regulation is a Medicare supplement policy that:
1. Has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L; and
2. Is offered and available for issuance to new enrollees by the same insurer that issued the individual’s Medicare supplement policy with outpatient prescription drug coverage
(6) Notification provisions.
(a) Upon an event described in Subsection (2) of this section resulting in a loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the insurer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual’s rights under this section, and of the obligations of insurers of Medicare supplement policies under Subsection (1) of this section. This notice shall be communicated simultaneously with the notice of termination.
(b) Upon an event described in Subsection (2) of this section resulting in an individual ceasing enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the insurer offering the policy, the organization that offers the contract or agreement, policy, or plan, the organization that offers the contract or agreement, policy, or plan, respectively, shall notify the individual of the individual’s rights under this section, and of the obligations of insurers of Medicare supplement policies under Subsection (1) of this section. This notice shall be communicated simultaneously with the notification of enrollment.
Section 13. Standards for Claims Payment.
(1) An insurer shall comply with 42 U.S.C. 1395ss, section 1882(c)(3) of the Social Security Act, by:
(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form required and making a payment determination on the basis of the information contained in that notice;
(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;
(c) Paying the participating physician or supplier;
(d) Upon enrollment, furnishing each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;
(e) Paying user fees for claim notices that are transmitted electronically or in another manner; and
(f) Providing to the Secretary of, at least annually, a central mailing address to which all claims may be sent by Medicare carriers,
(2) Compliance with the requirements established in Subsection (1) of this section shall be certified to the Commissioner as part of the insurer’s annual filing pursuant to KRS 304.3-240.
Section 14. Loss Ratio Standards and Refund or Credit of Premium.

(1) Loss Ratio Standards.

(a) Pursuant to KRS 304.14-530, a Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form which total:

a. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies;

2. The calculation shall be in accordance with accepted actuarial principles and practices; and

a. Based on:

(i) Incurred claims experience or incurred health care expenses if coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and

(ii) Earned premiums for the period, and

b. Incurred health care expenses if coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Rulings of rate-making shall demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from Subsection (1)(a)1a and 2 of this section when combined with actual experience beginning with July 5, 1996, to date; and

3. The appropriate loss ratio requirement from Subsection (1)(a)1a and b of this section over the entire future period for which the rates are computed to provide coverage.

(2) Refund or credit calculation.

(a) An Insurer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in HL-MS-1 for each type in a standard Medicare supplement benefit plan:

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a state-wide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the insurer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds the amount as identified on the annual refund calculation form HL-MS-1. The refund shall include the experience from the beginning of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for three-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

3. Annual filing of Premium Rates.

(a) An insurer of Medicare supplement policies and certificates issued before or after January 14, 1992, in this state shall file annually for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner in KRS 304.14-120:

1. Rates;

2. Rating schedule, and

3. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves.

(c) An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every Insurer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with KRS 304.14-120:

1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

2. Appropriate premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the Insurer for the Medicare supplement policies or certificates. A premium adjustment which would modify the loss ratio experience under the policy or certificate other than the adjustments described in this subsection shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.

3. If an Insurer fails to make premium adjustments acceptable to the commissioner, the Insurer may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

4. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) Public Hearings. The commissioner may conduct a public hearing pursuant to KRS 304.2-310, to gather information concerning a request by an Insurer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be published in accordance with KRS 304.2-320.

Section 15. Filing and Approval of Policies and Certificates and Premium Rates.

(1) An insurer shall not deliver or issue for delivery a policy or certificate to a resident of Kentucky unless the policy form or certificate has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner in KRS 304.14-120.

(2) An insurer shall file, with the commissioner, any riders of amendments to policy or certificate forms, issued in Kentucky, to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173.

(3) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with KRS 304.14-120.

(4) Except as provided in Paragraph (b) of this subsection, an insurer shall not file for approval more than one (1) form of a
policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An insurer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:
1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods;
3. The addition of either guaranteed issue or non-renewal coverage;
4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) A type of a policy or certificate form shall include:
1. An individual policy;
2. A group policy;
3. An Individual Medicare Select policy; or
4. A group Medicare Select policy.

(5)(a) Except as provided in subparagraph 1 of this paragraph, an insurer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form or certificate form if the insurer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the insurer shall not offer for sale the policy form or certificate form in Kentucky.

2. An insurer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the insurer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another insurer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (a) of this subsection unless the insurer complies with the following requirements:
1. The insurer provides an actuarial memorandum, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and
2. The insurer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6)(a) Except as provided in Paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 14 of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An insurer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after October 4, 2005, based upon a structure or methodology with any groupings of attained ages greater than one (1) year. The ratio between rates for successive ages shall increase smoothly as age increases.

Section 16. Permitted Compensation Arrangements.
(1) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year commission is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for no fewer than five (5) renewal years.

(3) An insurer or other entity shall not provide compensation to its agents or other producers and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced.

(1) General Rules.
(a) Medicare supplement policies and certificates shall include a renewal or continuation provision.

2. The language or specifications of an renewal or continuation provision shall be consistent with the type of contract issued.

3. The renewal or continuation provision shall:
   a. Be appropriately captioned;
   b. Appear on the first page of the policy; and
   c. Include any reservation by the insurer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(b) A rider or endorsement added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduces or eliminates benefits or coverage in the policy shall require a signed acceptance by the insured, except for a rider or endorsement by which an insurer:
   a. Effectuates a request made in writing by the insured;
   b. Exercises a specifically reserved right under a Medicare supplement policy; or
   c. Is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.

2. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:
   a. The benefits are required by the minimum standards for Medicare supplement polices; or
   b. The increased benefits or coverage is required by law.

3. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(9). Insurers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and Centers for Medicare and Medicaid Services and in a type size no smaller than twelve point type.

2. Delivery of the guide described in subparagraph 1 of this paragraph shall be made:
   a. Whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as described in this regulation.
b. To the applicant upon application and acknowledgement of receipt of the guide shall be obtained by the insurer, except that direct response insurer shall deliver the guide to the applicant upon request but not later than at policy delivery.

(2) Notice requirements.
(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an insurer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:
1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and
2. Inform each policyholder or certificate holder as to if any premium adjustment is to be made due to changes in Medicare.
(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
(c) The notices shall not contain or be accompanied by any solicitation.

(4) Outline of Coverage Requirements for Medicare Supplement Policies.
(a) An insurer shall provide an outline of coverage to all applicants when an application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and
(b) If an outline of coverage is provided at application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINAL- LY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this section shall consist of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the insurer. The outline of coverage shall be in the language and format prescribed in the HL-MS-4 in no less than twelve (12) point type. All plans shall be shown on the cover page, and charts that are offered by the insurer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(5) Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.
(a) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy, or other policy identified in Section (4)(2) of this administrative regulation, issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.
2. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.
3. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subsection (5)(a)(ii) of this section shall disclose, using the applicable statement in HL-MS-3 the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 19. Requirements for Application Forms and Replacement Coverage.
(1) Comparison statement.
(a) If a Medicare Advantage or Medicare supplement policy or certificate is to replace another Medicare supplement or Medicare Advantage policy or certificate, there shall be presented to the applicant, no later than the application date, HL-MS-5.
(b) Direct response insurers shall present the comparison statement to the applicant not later than when the policy is delivered.
(c) Agents shall:
1. Obtain the signature of the applicant on the comparison statement;
2. Sign the comparison statement; and
3. Send the comparison statement to the insurer and attach a copy of the comparison statement to the replacement policy.
(2)(a) Application forms shall include the questions on HL-MS-6 designed to elicit information as to whether, as of the date of the application:
1. The applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force; or
2. A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force.
(b) An agent shall provide the HL-MS-07 to the applicant.
(c) A supplementary application or other form to be signed by the applicant and agent containing the questions as found on the HL-MS-06 and statements on HL-MS-07 may be used.
(3) Agents shall list, on HL-MS-06 or on the supplementary form as identified in subsection (2)(c), any other health insurance policies they have sold to the applicant including:
(a) Policies sold which are still in force; and
(b) Policies sold in the past five (5) years that are no longer in force.

(4) For an insurer that uses direct response, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, any insurer, other than an insurer that uses direct response, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the agent and the agent, except if the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. An insurer that uses direct response shall deliver to the applicant at issuance of the policy, the notice regarding replacement of Medicare supplement coverage.

(6) The notice required by Subsection (5) of this section for an insurer shall be provided as specified HL-MS-08, in no less than twelve (12) point type or in a form developed by the insurer, which shall:
(a) Meet the requirements of this section;
(b) Be filed with and approved by the commissioner prior to use.

Section 19. Filing Requirements for Advertising and Policy Delivery.
(1) An insurer shall provide a copy of any Medicare supplement advertisement intended for use in Kentucky whether through written, electronic, radio, or television, or any other medium to the commissioner for review prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the insurer.
(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisement as required by this section. Insurers and agents shall not use "leads" if the solicitation materials have been disapproved by the commissioner.

(3) If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipts to the insurer.

Section 20. Standards for Marketing.
(1) An insurer, directly or through its agents or other representatives, shall:
(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.
(b) Establish marketing procedures to assure excessive insurance is not sold or issued.
(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."
(d) Inquire and make every reasonable effort to identify if a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any insurance.
(e) Establish reasonable procedures for verifying compliance with subsection (1) of this section.
(f) In addition to the practices prohibited in Subtitle 12 of KRS Chapter 304 and 806 KAR 12.092, the following acts and practices shall be prohibited:
(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurance for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.
(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.
(3) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and similar words shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 21. Appropriateness of Recommended Purchase and Excessive Insurance.
(1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.
(2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate shall be prohibited.
(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

Section 22. Reporting of Multiple Policies.
(1) On or before March 1 of each year, an insurer shall report to the commissioner the following information, using HL-MS-2, for every individual resident of Kentucky for which the insurer has in force more than one Medicare supplement policy or certificate:
(a) Policy and certificate number; and
(b) Date of issue.
(2) The items set forth in subsection (1) of this section shall be grouped by individual policyholder.

Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates.
(1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

Section 24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing.
This section applies to all policies with policy years beginning on or after the effective date of this regulation.

(1) An insurer of a Medicare supplement policy or certificate shall not:
(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a pre-existing condition, on the basis of the genetic information with respect to any individual; and
(b) Discourage the inclusion, asking, or requesting the genetic information with respect to any individual.

(2) Nothing in Subsection (1) of this section shall be construed to limit the ability of an insurer, to the extent permitted by law, from:
(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant;
(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder in one individual which cannot also be used as genetic information about other group members and to further increase the premium for the group.

(3) An insurer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) of this section shall not be construed to prohibit an insurer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as described for the purposes of applying the regulations promulgated under part C of title XI of the Social Security Act, 42 U.S.C. § 1320d et seq., and section 254 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2 and consistent with Subsection (1) of this section.

(5) For purposes of carrying out Subsection (4) of this section, an insurer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding Subsection (3) of this Section, an insurer of a Medicare supplement policy may request, but not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:
(a) The request is made pursuant to research that complies with 45 C.F.R. part 46, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.
(b) The insurer clearly indicates to each individual, or if a minor child, to the legal guardian of the child, to whom the request is made that:
1. Compliance with the request is voluntary; and
2. Noncompliance shall have no effect on enrollment status or premium or contribution amounts;
(c) Genetic Information collected or acquired under this Subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.
(d) The insurer notifies the Secretary in writing that the insurer is conducting activities pursuant to the exception provided for under this Subsection, including a description of the activities conducted.

(e) The insurer complies with other conditions as the Secretary may by regulation require for activities conducted under this Subsection.

(7) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(8) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to an individual's enrollment under the policy in connection with enrollment.

(9) If an Insurer of a Medicare supplement policy or certificate obtains genetic Information incidental to the requesting, requiring, or purchasing of other Information concerning any Individual, the request, requirement, or purchase shall not be considered a violation of Subsection (9) of this section if the request, requirement, or purchase is not In violation of Subsection (7) of this section.

Section 25. Incorporated by Reference.

(1) The following material is corporate by reference:

(a) "HL-MS-1," (July 2009) edition;
(b) "HL-MS-2," (July 2009) edition;
(c) "HL-MS-3," (July 2009) edition;
(d) "HL-MS-4," (July 2009) edition;
(e) "HL-MS-5," (July 2009) edition;
(f) "HL-MS-06," (July 2009) edition;
(g) "HL-MS-07," (July 2009) edition; and
(h) "HL-MS-08," (July 2009) edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's Web site at

SHARON P. CLARK, Commissioner
ROBERT VANCE, Secretary
APPROVED BY AGENCY: June 19, 2009
FILED WITH LRC: June 26, 2009 at 10 a.m.
CONTACT PERSON: Melea Rivera, Health and Life Division, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms and establishes standards and requirements for Medicare supplement and select policies and certificates.

(b) The necessity of this administrative regulation: This administrative regulation will implement new and amended requirements for Medicare Supplement and Medicare Select policies in accordance with Federal law.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as described in KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish minimum requirements for Medicare Supplement Insurance and Medicare Select Insurance policies and certificates.

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

(a) How the amendment will change this existing administrative regulation? This is not an amendment.

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

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

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

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 90 insurers with a health line of authority who offer or renew Medicare supplement or select policies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers who have closed blocks of Medicare Supplement business or who continue to offer these policies will continue to follow reporting and refund calculation requirements that were previously established in a different regulation. Insurers who wish to offer new policies will need to file rates and forms to comply with the 2010 standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurers should incur minimum costs as a result of the promulgation of this administrative regulation since these requirements are the same for each state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurer will be in compliance of federal law and this administrative regulation.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Department of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Department of Insurance.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation will apply equally to all insurers with a health line of authority who wish to offer Medicare Supplement or Medicare Select policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes minimum standards Medicare supplement insurance policies and certificates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.  
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation are believed to be minimal, if any, for the Department of Insurance. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON


2. If an insurer chooses to offer or renew Medicaid Supplement or Medicare Select Insurance, the insurer is required to comply with the minimum requirements of this administrative regulation, which adopts the NAIC Model as required by federal law.

3. Public law 110-233 and 110-275, now codified in the text and notes of 42 U.S.C.A § 1395ss require states to adopt the revised version of the NAIC Model law relating to Medicare supplement insurance. Specially the revised model establishes requirements relating to the nondiscrimination of genetic information and provide new and amended benefits for Medicare supplement policies.

4. This administrative regulation adheres to federal requirements as referenced in this analysis.

5. This administrative regulation does not impose a stricter standard than the standards allowed by the NAIC Model and federal law.

STATEMENT OF EMERGENCY
907 KAR 3:183E

This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services to issue supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, In April 2009, to the supplemental payments. This administrative regulation must be enacted on an emergency basis to: Provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients; and Prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Facilities Management
(Emergency Amendment)

907 KAR 3:183E. Supplemental payments to participating DRG hospitals [In-state inpatient hospital special reimbursement]


EFFECTIVE: June 26, 2009

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes provisions regarding supplemental payments totaling $195 million in aggregate to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments.

Section 1. Definitions. (1) "Aggregate cost gap" means the difference between a hospital's cost and Medicaid payments received by the hospital for DRG services for the period beginning July 1, 2004 through June 30, 2007 trended to the midpoint of the January 2009 through December 2010 payment period.

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

(3) "DRG" means diagnosis-related group.

(4) "Federal financial participation" is defined by 42 C.F.R. 100.203.

(5) "Pediatric teaching hospital" is defined by KRS 205.655(1).

(6) "Related to the provider" is defined by 42 C.F.R. 443.17.

(7) "University hospital" is defined by KRS 205.639(4).

Section 2. Supplemental Payments to DRG Hospitals Which Have Agreed To Accept the Payments. (1) The department shall issue eight (8) payments:

(a) To a hospital; 1. Reimbursed via the DRG reimbursement methodology which agreed, in April 2009, to accept the supplemental payments, and 2. As a supplement to its reimbursement for Inpatient hospital
services paid via the DRG reimbursement methodology.
(b) Beginning with two (2) payments issued during the calendar quarter in which this emergency administrative regulation is enacted followed by one (1) payment for each subsequent calendar quarter until the quarter ending December 31, 2010; and
(c) Representing calendar quarters beginning with the calendar quarter ending March 31, 2009 and ending with the calendar quarter ending on December 31, 2010.
(2) A supplemental payment referenced in subsection (1) of this section shall be paid from an aggregate supplemental payment pool.
(a) That shall not exceed $195 million; and
(b) That shall be reduced by the amount of the share of a hospital, if any, that foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation.
(3) A hospital's share of the aggregate supplemental payment pool referenced in subsection (2) of this section shall:
(a) Equal its proportionate share of its aggregate cost gap compared to the aggregate cost gap of all hospitals reimbursed via the DRG reimbursement methodology:
1. Which agreed to accept the supplemental payments referenced in subsection (1) of this section; and
2. Except for the excluded hospitals referenced in Section 4(2).
(b) Be divided by sixty-six (66) equal units; and
(c) Be paid on a descending balance basis with the:
1. First quarterly payment representing eight (8) equal units; and
2. Second quarterly payment representing seven (7) equal units;
3. Third quarterly payment representing six (6) equal units;
4. Fourth quarterly payment representing five (5) equal units;
5. Fifth quarterly payment representing four (4) equal units;
6. Sixth quarterly payment representing three (3) equal units; and
7. Seventh quarterly payment representing two (2) equal units;
and
8. Eighth quarterly payment representing one (1) unit.
Section 3. Foregoing Supplemental Payments. (1) A hospital shall forego its share of the aggregate supplemental payment pool referenced in Section 2(2) of this administrative regulation if it at any time does not agree to accept the supplemental payments referenced in Section 2(1) of this administrative regulation.
(2) If a hospital foregoes its share of the aggregate supplemental payment pool referenced in Section 2(2) in this administrative regulation, its share of the aggregate supplemental payment pool shall:
1. Not be paid to the hospital; and
2. Be subtracted from the $195 million aggregate supplemental payment pool.
Section 4. Excluded Hospitals. The department shall not make a supplemental payment referenced in Section 2(1) of this administrative regulation to the following hospitals reimbursed via the DRG reimbursement methodology:
(1) A hospital which foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation;
(2) A university hospital;
(3) A pediatric teaching hospital; or
(4) A hospital which owns, operates, is in any way affiliated with, has any common ownership with, or has any common operation with a pediatric teaching hospital.
Section 5. Federal Financial Participation. A supplemental payment referenced in Section 2(1) of this administrative regulation shall be contingent upon the department's receipt of federal financial participation for the payment.
Section 6. Upper Payment Limit. (1) A supplemental payment referenced in Section 2(1) of this administrative regulation shall not exceed the limit established in:
(a) 42 C.F.R. 447.271;
(b) 42 C.F.R. 447.72; or
(c) Any other applicable statute or regulation.
(2) No provision in this administrative regulation shall be interpreted to require the department to make a payment which:
(a) Would exceed the limit established in:
1. 42 C.F.R. 447.271;
2. 42 C.F.R. 447.72; or
(c) Any other applicable statute or regulation; or
(b) Is not subject to federal financial participation, as mandated by 2006 Ky. Acts ch. 252, Part I, H.3.b.23, establishes special reimbursement for an instate inpatient acute-care hospital, a freestanding rehabilitation-hospital, a freestanding psychiatric hospital, a long-term acute-care hospital, and a state-designated rehabilitation-teaching hospital that is not state-owned or operated.
Section 1. Definitions. (1) "Acute-care hospital" is defined by KRS 206.693(1).
(2) Appalachian Regional Hospital system means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.
(3) "Department" means the Department for Medicaid Services or its designee.
(4) "Diagnosis-related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.
(5) "Relative weight" means the factor-assigned to each Medicare or Medicaid-DRG classification that represents the average resources required for a hospital to provide a Medicare or Medicaid-DRG classification relative to the average resources required for all relevant discharges in the nation or state.
(6) "State-designated rehabilitation-teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:
(a) Provides at least 3,000 days of rehabilitation care to Medicaid-eligible recipients in a fiscal year;
(b) Provides at least twenty-five (25) percent of the statewide total of inpatient care to Medicaid-eligible recipients; and
(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution postdischarge.
Section 2. Inpatient Hospital Reimbursement Pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23 the department shall:
(1) Reimburse a lump-sum payment to an instate inpatient acute-care hospital based on the hospital's Medicaid recipient DRG volume already adjudicated for claims with admission dates of July 1, 2006 through June 30, 2006;
(2) Increase each DRG relative weight by seventeen (17) percent subject to the availability of funds. The DRG relative weight increase shall be a continuation of the relative weight increase which expired at close of business June 30, 2006, established in 907 KAR 3:1805 submitted to the Legislative Research Commission on May 4, 2006 and shall not be an additional increase;
(3) Reimburse two (2) lump-sum payments to an instate freestanding psychiatric hospital, instate freestanding rehabilitation hospital, instate-long term acute-care hospital, or an instate state-designated rehabilitation-teaching hospital that is not state-owned or operated, as follows:
(a) One (1) lump-sum payment shall be based on the hospital's Medicaid-patient days covering admission dates from July 1, 2006 through June 30, 2006; and
(b) One (1) lump-sum payment shall be based on the hospital's Medicaid-patient days covering admission dates from July 1, 2006 through June 30, 2007; and
(4) Reimburse two (2) lump-sum payments to an instate state-designated rehabilitation-teaching hospital that is not state-owned or operated, as follows:
(a) One (1) lump-sum payment shall be based on the hospital's Medicaid-patient days covering admission dates from July 1, 2006 through June 30, 2006; and
(b) One (1) lump-sum payment shall be based on the hospital's Medicaid-patient days covering admission dates from July 1, 2006 through June 30, 2007.
Section 3. Supplemental Payments to Appalachian Regional Hospital System. (1) The department shall make quarterly supplemental payments to the Appalachian Regional Hospital system-
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

an amount that is equal to the lesser of:
(a) The difference between what the department pays for inpatient services pursuant to 907 KAR 1:013 and what Medicare would pay for inpatient services to Medicaid eligible individuals; or
(b) $7.5 million per year in aggregate.

A supplemental payment to a hospital in the Appalachian Regional Hospital System shall be based on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(3) A supplemental payment made in accordance with subsection (1) of this section shall be:
(a) For a service provided on or after July 1, 2006;
(b) Available only when the available federal funds that supply the state’s share to be matched with federal funds; and
(c) In compliance with the limitations in 42 C.F.R. 447.372.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: June 23, 2009
FILED WITH LRC: June 26, 2009 at 11 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street S W-B, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation establishes that the Department for Medicaid Services (DMS) will issue eight (8) supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and, thus, protect the health, safety, and welfare of Medicaid recipients and to prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and, thus, protect the health, safety, and welfare of Medicaid recipients.
(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 authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and, thus, protect the health, safety, and welfare of Medicaid recipients.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment establishes that the Department for Medicaid Services (DMS) will issue eight (8) supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments. Additionally, it eliminates provisions which have expired and clarifies that the supplemental payments are contingent upon the provision of federal financial participation by the Centers for Medicare and Medicaid Services (CMS) to the department.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and, thus, protect the health, safety and welfare of Medicaid recipients and to prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009. Failure to maintain this safe guard would jeopardize the health, safety and
ING SOURCES include federal funds authorized under Title XIX of the
Social Security Act and authorized under the American Recovery
and Reinvestment Act of 2009, matching funds of general fund
appropriations and Medical Assistance Revolving Trust funds.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: Neither an
increase in fees nor funding is necessary to implement the
amendment.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees. This
administrative regulation neither establishes nor directly or indirec-
tly increases any fees.

(9) Tiering: Is tiering applied? This administrative regulation
establishes supplemental payments to hospitals reimbursed via the
DRG reimbursement methodology which agreed, in April 2009, to
the supplemental payments. A hospital's share of the aggregate
supplemental payment pool will equal its proportionate share of its
aggregate cost gap compared to the aggregate cost gap of all
hospitals reimbursed via the DRG reimbursement methodology
which agreed to accept the supplemental payments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government
       (including cities, counties, fire departments or school districts) will
be impacted by this administrative regulation? The Department for
Medicaid Services (DMS) as well as eight (8) county-owned hospi-
tals will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or au-
thorizes the action taken by the administrative regulation. Pur-suant
to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has
exercised the option to establish a Medicaid Program for Indigent
Kentuckians. Having elected to offer Medicaid coverage, the state
must comply with federal requirements contained in 42 U.S.C.
1386 et. seq. KRS 194A.030(2), KRS 194A.050(1), KRS
205.520(2) and (3) and KRS 205.560(1)(a) and (2) authorize the
action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year? Total pay-
ments, in aggregate, to the eight (8) county-owned hospitals agree-
ting to the supplemental payments equal $6.4 million (federal and
state combined). $4.6 million of the $6.4 million would be paid in
calendar year 2009 with the balance $1.8 million) to be paid in
calendar year 2010.

(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 Total
payments, in aggregate, to the eight (8) county-owned hospitals
agreeing to the supplemental payments equal $6.4 million (federal
and state combined). $4.5 million of the $5.4 million would be paid in
calendar year 2009 with the balance $1.8 million) to be paid in
calendar year 2010.

(c) How much will it cost to administer this program for the first
year? The amendment will cost DMS $195 million (federal and
state combined) DMS would pay $140.8 million (federal and state
combined) in calendar year 2009 and the balance - $54.2 million
(federal and state combined) in calendar year 2010.

(d) How much will it cost to administer this program for subse-
quent years The amendment will cost DMS $195 million (federal
and state combined) DMS would pay $140.8 million (federal and
state combined) in calendar year 2009 and the balance - $54.2
million (federal and state combined) in calendar year 2010.

Note: If specific dollar estimates cannot be determined, provide
a brief narrative to explain the fiscal impact of the administrative
regulation.
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, July 14, 2009)


STATUTORY AUTHORITY: KRS 131.130(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of the revenue laws by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Property and Severance Taxes by the Department of Revenue.

Section 1. Property Tax - Required Forms. (1) Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2009(2008)", shall be the packet of files and instructions relating to Revenue Form 61A200 for use by public service companies reporting company name, location and other pertinent filing information with the Department of Revenue. (2) Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2009(2008)", shall be used by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue. (3) Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", shall be filed by public service companies with the Department of Revenue, reporting the System and Kentucky original cost, total depreciation and depreciated cost for all operating and nonoperating property types as of the end of the taxable year. (4) Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", shall be filed by public service companies with the Department of Revenue, reporting the assessed value at all Kentucky apportioned and regular licensed motor vehicles, railroad car lines and commercial watercraft as of the end of the year. (5) Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (balance sheet) as of December 31 for the system operating unit including Kentucky. (6) Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (income statement) for 12 months ending December 31 for the system operating unit including Kentucky. (7) Revenue Form 61A200(E), "Filing Extension Application", shall be used by public service companies to request an extension of time to file the public service company tax return. (8) Revenue Form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year. (9) Revenue Form 61A200(H), "Report of Funded Debt", shall be filed by public service companies with the Department of Revenue reporting an analysis of their debt as of the end of the taxable year. (10) Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting a summary of the business activity within each taxing district. (11) Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district. (12) Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting an inventory of the amount and kind of operating property, owned or leased, located in this state, for each county, city and special taxing district. (13) Revenue Form 61A200(L), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased located in this state, for each county, city and special taxing district. (14) Revenue Form 61A200(M), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky. (15) Revenue Form 61A200(N), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky. (16) Revenue Form 61A200(N)(1) Revenue Form 61A200(N)(1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District(Kentucky-Operating-Lease)", shall be filed by public service companies with the Department of Revenue, reporting all leased real property and the terms of the lease by taxing district. (17) Revenue Form 61A200(N)(2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased personal property and the terms of the lease by taxing district. (18) Revenue Form 61A200(N)(3), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by public service companies with the Department of Revenue reporting the annual operating lease payments paid during the calendar year. (19) Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting the name and address of the company and the mileage in Kentucky. (20) Revenue Form 61A200(O) Supplemental Report of Operations for Container and Residential Landfills, shall be filed by landfill owners with the Department of Revenue, reporting historic, current, and projected operational information. (21) Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Department of Revenue, reporting certified pollution control equipment, the original cost and the net book value.
(22) Revenue Form 61A206(S). "Filing Requirements for Commercial Passenger and Cargo Airlines", shall be filed by the Department of Revenue, reporting the number of all owned and leased aircrafts.

(23) Revenue Form 61A200(U). "Industreal Revenue Bond Property", shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(24) Revenue Form 61A202, 2009[2009]. "Public Service Company Property Tax Return for Railroad Car Line", shall be filed by railroad car line companies with the Department of Revenue, listing the railcars by type and reporting cost, age, and mileage for each railcar.

(25) Revenue Form 61A206(E). "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers", shall be the packet of files and instructions relating to Revenue Form 61A206 for use by commercial air passenger and air freight carriers reporting company name, location, and other pertinent information with the Department of Revenue.

(26) Revenue Form 61A206. "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", shall be filed by all commercial air passenger and air freight carriers reporting taxpayer name, location, and other pertinent information with the Department of Revenue.

(27) Revenue Form 61A206(A). "Filing Extension Application for Public Service Company Personal Property Tax Return", shall be filed by commercial air passenger and air freight carriers to request an extension of time to file the commercial air passenger and air freight carriers tax return.

(28) Revenue Form 61A206(B). "Report of Kentucky Registered and Licensed Motor Vehicles", shall be filed by commercial air passenger and air freight carriers reporting vehicles, both owned and leased, within the state of Kentucky as of December 31.

(29) Revenue Form 61A206(C). "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", shall be used by all commercial, passenger, or carries all commercial and passenger and cargo airlines conducting business in Kentucky to provide the Department of Revenue with year-end financial statements, a complete annual report, and a complete 10K report for the twelve (12) month period ending December 31.

(30) Revenue Form 61A206(D). "Report of System Airport Fleet", shall be filed by commercial air passenger and air freight carriers providing a complete listing of fleet aircraft owned and capital leased as of December 31.

(31) Revenue Form 61A206(E). "Report of System Airport Fleet", shall be filed by all commercial air passenger and air freight carriers providing a complete listing of fleet aircraft and any other aircraft held for resale or nonoperating.

(32) Revenue Form 61A206(F). "Report of Kentucky Flight Statistics By Airport", shall be filed by all commercial air passenger and air freight carriers providing a listing of all arrivals, departures, and ground time at all Kentucky airports and heliports.

(33) Revenue Form 61A206(G). "Report of System and Kentucky Allocation Factors", shall be filed by all commercial air passenger and freight carriers providing a listing of property factors and business factors.

(34) Revenue Form 61A206(H). "Report of Funded Debt", shall be filed by all commercial air passenger and freight carriers listing all debt obligations, both long term and short term, by class and obligation.

(35) Revenue Form 61A206(I). "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing real property in Kentucky leased on an operating lease basis.

(36) Revenue Form 61A206(J). "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by all commercial air passenger and air freight carriers listing all annual operating lease payments.

(37) Revenue Form 61A206(K). "Report of Owned Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property owned in Kentucky.

(38) Revenue Form 61A206(L). "Report of Owned Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property owned in Kentucky.

(39) Revenue Form 61A206(M). "Summary Report of Total System and Kentucky Operations", shall be filed by all commercial air passenger and air freight carriers listing all real and personal property owned and leased, reporting the original cost, depreciation, and depreciated cost values.

(40) Revenue Form 61A206(N). "Industreal Revenue Bond Property", shall be filed by all commercial air passenger and air freight carriers listing real and tangible property purchased with an industrial revenue bond.

(41) Revenue Form 61A206(O). "Public Service Company Sales", shall be filed by commercial air passenger and air freight carriers listing any assets bought or sold during the year.

(42) Revenue Form 61A207(0). "Commercial Watercraft Personal Property Tax Return", shall be filed by all commercial watercraft owners within the state of Kentucky, reporting the watercraft's book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(43) Revenue Form 61A207. "Commercial Watercraft Personal Property Tax Return", shall be filed by all commercial watercraft owners within the state of Kentucky, reporting the watercraft's book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(44) Revenue Form 61A207(A). "Report of Owned Vessels In Your Possession", shall be filed with the Department of Revenue, reporting all owned vessels (both available and operating) in their fleet as of January 1, 2009[2008].

(45) Revenue Form 61A207(B). "Report of Owned Vessels in Possession of Others", shall be filed with the Department of Revenue, reporting all owned vessels that are in possession of other persons, corporations, companies, operators, or charterers as of January 1, 2009[2008].

(46) Revenue Form 61A207(C). "Report of Nonowned Vessels In Your Possession", shall be filed with the Department of Revenue, reporting all nonowned vessels (both available and operating) in their fleet as of January 1, 2009[2008].

(47) Revenue Form 61A207(D). "Valuation Worksheet", shall be filed with the Department of Revenue, reporting the original cost, cost of rebuilds, and the cost of major improvements of all owned and non-owned vessels.

(48) Revenue Form 61A207(E). "Report of Kentucky Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on Kentucky waterways.

(49) Revenue Form 61A207(F). "Report of System Route (400) Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on United States waterways.

(50) Revenue Form 61A207(G). "Instructions for Enclosed Form 61A211", shall be provided by public service companies with the Department of Revenue, reporting any full or partial sale or purchase of assets of the public service company.

(51) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Sits", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(52) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Sits", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(53) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Sits", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(54) Revenue Form 61A230, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notify-
ing him of the final assessment of the public service company property.

(55)(56) Revenue Form 61A240, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of a tentative assessment of the public service company property. This notice shall inform the taxpayer of the protest period.

(57)(56) Revenue Form 61A250, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying the taxpayer of his claim of assessed value on public service company property.

(57)(62) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(57)(58) Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", shall provide instructions for completing Revenue Form 61A255, "Public Service Company Property Tax Statement".

(57)(59) Revenue Form 61A500(P), "2009/2008 Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", shall be the packet of files and instructions relating to Revenue Form 61A500 for use by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(57)(49) Revenue Form 61A500, "2009/2008 Tangible Personal Property Tax Return for Communication/Communication Providers", shall be filled by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue, summarizing the Kentucky Original Cost by taxing jurisdiction.

(57)(44) Revenue Form 61A500(D), "Summary of Reported Tangible Personal Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.

(57)(44) Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", shall be filled by telecommunication, satellite, and cable television companies with the Department of Revenue, and shall contain an inventory of the amount and kind of personal property owned and located in Kentucky by taxing jurisdiction.

(57)(46) Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property.

(57)(46) Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue to report inventory as of January 1.

(57)(47) Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(57)(48) Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel storage cost.

(57)(48) Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age, and the price.

(70)(59) Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair cash value of bulk inventory summarized on Form 61A508.
Revenue.

(901)(79) Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", shall be filed by institutions of religion seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.

(911)(74) Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", shall be submitted to request copies of documents required to be retained by the PVA.

(921)(74) Revenue Form 62A044, "Affidavit for Correction/Correction of Motor Vehicle/Boat/Trailer Property Tax", shall be completed by the owner of a vehicle, boat, or trailer [or boat], at the property valuation administrator's office in order to correct owner of vehicle, boat, or trailer [or boat] information in the ad valorem tax computer system. The PVA shall present the form to the county clerk when a tax refund is authorized.

(931)(79) Revenue Form 62A200(P), "2009-2008 Unmined Coal Property Tax Information Return", shall be the packet of files and instructions relating to Revenue Form 62A200 for use by owners or lessors of unmined minerals, reporting filer information with the Department of Revenue.

(941)(74) Revenue Form 62A200, "2009-2008 Unmined Coal Property Tax Information Return", shall be filed by owners or lessors of unmined minerals, reporting filer information with the Department of Revenue.

(951)(79) Revenue Form 62A200, "Schedule A Fee Property Ownership", shall be filed by owners or lessors of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty interest for each leased parcel.

(961)(79) Revenue Form 62A200, "Schedule B Leased Property/Mineral Property Ownership (Coal-Only)", shall be filed by all lessors and sublessees [or owners of leased coal], and the Department of Revenue, reporting ownership information for each parcel or royalty interest for each leased parcel.

(971)(77) Revenue Form 62A200, "Schedule C Leased Property", shall be filed by all lessors and sublessees with the Department of Revenue, reporting a property schedule for each parcel leased from another party and outlined on the lessee map. Revenue Form 62A200, "Schedule C [D] Property or Stock Transfers", shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

(981)(79) Revenue Form 62A200, "Schedule D [E] Lease Terminations, Transfers or Assignments", shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel identifier, date lease terminated and the reason for termination.

(991)(80) Revenue Form 62A200, "Schedule E [F] Farm Exception to Unmined Minerals Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be exempted from the unmined minerals tax.

(1001)(84) Revenue Form 62A200, "Schedule E [G] Geological Information by County", shall be filed by owners or lessors of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

(1011)(82) Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(1021)(82) Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district. This form shall also be known as "first recap".

(1031)(84) Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304. This form shall also be known as "final recap" or "second recap".

(1041)(86) Revenue Form 62A307, "Property Owner Confer-
(122)(403) Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", shall be filed by a taxpayer for refunds of property tax.

(123)(404) Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", shall be used by a property valuation administrator to prepare additional or supplemental property tax bills.

(124)(405) Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", shall be provided to assist the PVA with the preparation of additional or supplemental tax bills.

(125)(406) Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.


(127)(408) Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for 1996 and earlier tax years.


(129)(410) Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", shall be used by the sheriff to report all exonerations made to the tax bills by the property valuation administrator.

(130)(411) Revenue Form 62A372-A, "Certification", shall be used by the sheriff to certify that the list of exonerations is accurate.

(131)(412) Revenue Form 62A378, "Report of Location of Mobile Homes", shall be filed by every person providing rental space for mobile homes and house trailers. This form shall be filed with the property valuation administrator of the county in which the park is located.

(132)(413) Revenue Form 62A379, "List of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property improperly omitted from the tax roll or shall be used by a property valuation administrator to list any Involuntarily Omitted Real Property.

(133)(414) Revenue Form 62A384C, "Clay Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting the owner's name and address, percent ownership, product tons, and royalty rate.

(134)(415) Revenue Form 62A384D, "Tangible Personal Property Tax Return", shall be used by owners and lessors of land containing moveable mineral resources.

(135)(416) Revenue Form 62A384-G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells, and the total dollar value of production.

(136)(417) Revenue Form 62A384-4/G(0)I, "Instructions for Gas and Oil Property Tax Returns", shall be provided to filers of gas and oil property tax returns instructing filers of the acceptable method of completing the gas and oil property tax return.

(137)(418) Revenue Form 62A384L, "Limestone and Sand and Gravel Property Tax Return", shall be used by the Department of Revenue by persons owning or leasing limestone, sand, or gravel properties reporting mineral location, type of mining and production in the last three (3) years.

(138)(419) Revenue Form 62A384-O, "Oil Property Tax Return-Lease Report", shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing, owning or having developed oil properties to report developed oil property in Kentucky.

(139)(420) Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", shall be used by sheriffs to acknowledge receipt of the county's property tax bills and to document the total tax amount to be collected for each taxing district.

(140)(421) Revenue Form 62A385-A, "Sheriff's Receipt For Unpaid and Partially Paid Tax Bills", shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he assumes office.

(141)(422) Revenue Form 62A393, "Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the annual property tax settlement with the sheriff.

(142)(423) Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the incoming sheriff.

(143)(424) Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the outgoing sheriff.

(144)(425) Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.


(146)(427) Revenue Form 62A398, "Property Valuation Administrator's Bond", shall be completed by property valuation administrators evidencing surety with the Commonwealth and a local school board and affirming a commitment to fulfill the duties of the office.

(147)(428) Revenue Form 62A399, "Notice to Appear in Circuit Court", shall be served to a person who is indebted to another person who has a delinquent tax liability.

(148)(429) Revenue Form 62A400, "Notice of Distraint", shall be sent by the sheriff to notify persons in possession of personal property belonging to a delinquent property taxpayer that this property is subject to distraint in order to settle the tax liability.

(149)(430) Revenue Form 62A401, "Final Notice Before Distraint", shall be sent by the sheriff to the owner of real and personal property omitted from the tax roll.

(150)(431) Revenue Form 62A405, "Notice of Sale of Tax Bill", shall be sent by the county attorney to the owner of real property to notify the owner that a certificate of delinquency has been issued against the property.

(151)(432) Revenue Form 62A500(P), "2009/2008 Personal Property Tax Forms and Instructions", shall be the packet of forms and instructions relating to Revenue Form 62A500 for use by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or the Department of Revenue.

(152)(433) Revenue Form 62A500, "2009/2008 Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or the Department of Revenue.

(153)(434) Revenue Form 62A500-A, "2009/2008 Tangible Personal Property Tax Return (Aircraft Assessments Only)", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting the federal registration number, make and model, and taxpayer's value for each aircraft.

(154)(435) Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, that has not been reported on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

(155)(436) Revenue Form 62A500-L, "Lessor Tangible Personal Property Tax Return", shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the
county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

[156][147] Revenue Form 62A500-S1, "Dealers' Inventory Listing for Line 34 Tangible Personal Property Tax Return", shall be filed by automobile dealers, dealers with new boat and marine equipment held under a floor plan or dealers with new farm machinery held under a floor plan with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of property reported on line 34 of the Tangible Personal Property Tax Return.

[157][148] Revenue Form 62A500-W, "2009/2008 Tangible Personal Property Tax Return (Documented Watercraft)", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the cost guard number, make and model and taxpayer's value for each watercraft.

[158][149] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

[159][140] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

[160][141] Revenue Form 62A801-S2, "Schedule B, Computation of Exemption for Corporations", shall be filed with the Department of Revenue, by taxpayers filing Revenue Form 62A800 or 62A601, reporting the market value of U.S. government securities.

[161][142] Revenue Form 62A850, "Bank Deposits Tax Return", shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

[162][143] Revenue Form 62A850, "Certification of Tax Rate for Bank Deposits Franchise Tax", shall be filed by the taxing district with the Department of Revenue to notify the Department of Revenue of the rate set on bank deposits.

[163][144] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

[164][145] Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

[165][146] Revenue Form 62A880, "Personal Property Assessment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him of the value assessed by the department as well as all applicable penalties and interest.

[166][147] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

[167][148] Revenue Form 62B011, "2006/2007 Limestone, Sand, or Gravel Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

[168][149] Revenue Form 62B012, "2006/2007 Oil Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in oil property.


[170][151] Revenue Form 62B015, "2008 [2007 Gas Assessment Notice]", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

[171][152] Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

[172][143] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

[173][147] Revenue Form 62F020, "Requirements for the Preparation of Deeds", shall be an informational brochure on Kentucky's property tax system, sales and transfers of property and the requirements for preparing a deed.

[174][146] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer who wishes to appeal the assessment on real property.

[175][146] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 2, Severance Taxes - Required Forms.

[176][143] Revenue Form 1031100, "Kentucky Tax Registration Application", shall be filed by taxpayers with a coal severance and processing tax account listing taxpayer information including mine name and mining permit number.

[177][148] Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

[178][141] Revenue Form 55A001, "Application for Certificate of Registration for Coal Severe and/or Processors" shall be used by the Department of Revenue to register businesses that cover or process coal.

[179][142] Revenue Form 55A999, "Certificate of Registration - Severance Taxes", shall be used by the Department of Revenue to register coal–severance–taxpayer.—(4) Revenue Form 55A100, "Coal Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

[180][143] Revenue Form 55A100, "Part IV - Schedule 6-V - Schedule A1 of Coal Sales (Continuation)", shall be used by the taxpayer to report additional coal sales if there is no room on the return. "Part V-A Schedule for Thin Seam Coal Tax Credit", shall be used by the taxpayer to apply for tax credit for underground mining of thin coal seams.

[181][144] Revenue Form 55A101, "Coal Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

[182][145] Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

[183][146] Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

[184][147] Revenue Form 55A2001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

[185][148] Revenue Form 55A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

[186][149] Revenue Form 55A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

[187][149] Revenue Form 55A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

[188][149] Revenue Form 55A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by a taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

- 315 -
(13)(44) Revenue Form 56A105. "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

(14)(45) Revenue Form 56A109. "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(15)(46) Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(16)(47) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(17)(48) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(18)(49) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporters who wish to acquire an account number with the Kentucky Department of Revenue.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Property tax - referenced material:
   1. Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies" November 2008(2007);
   3. Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operators", November 2008(2007);
   4. Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", November 2008(2007);
   5. Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", November 2008(2007);
   6. Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", November, 2008 (2007);
   7. Revenue Form 61A200(E), "Filing Extension Application", November 2008(2007);
   8. Revenue Form 61A200(G), "Report of Capital Stocks", November 2008(2007);
   10. Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", November 2008(2007);
   11. Revenue Form 61A200(U), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", December 2008(2007);
   12. Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", November 2008(2007);
   13. Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", November 2008(2007);
   14. Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for all Interstate Companies", November 2008(2007);
   15. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroads and Sleeping Car Companies", November 2008(2007);
   16. Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District (Kentucky Operating Leased) November 2008(2007);
   17. Revenue Form 61A200(N2), "Report of Operating Leased Real Property Located in Kentucky By Taxing District (Kentucky Operating Leased) November 2008(2007);
   19. Revenue Form 61A200(C), "Railroad Private Car Mileage Report", November 2008(2007);
   21. Revenue Form 61A200(F), "Report of Property Subject to the Pollution Control Tax Exemption", November 2008(2007);
   22. Revenue Form 61A200(P), "Filing Requirements for Commercial Passenger and Cargo Airlines", November 2007(2007);
   23. Revenue Form 61A200(U), "Industrial Revenue Bond Property", November 2008(2007);
   27. Revenue Form 61A206(B), "Report of Kentucky Registered and Leased Motor Vehicles", October 2008(2007);
   29. Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", October 2008(2007);
   32. Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", October 2008(2007);
   33. Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", October 2008(2007);
   34. Revenue Form 61A206(G), "Report of Funded Debt", October 2008(2007);
   35. Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", October 2008(2007);
   38. Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", October 2008(2007);
   41. Revenue Form 61A206(N), "Industrial Revenue Bond Properties", October 2008(2007);
   42. Revenue Form 61A206(O), "Public Service Company Sales", October 2008(2007);
   43. Revenue Form 61A207(P), "Commercial Watercraft Property Tax Return", November 2008(2007);
   44. Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", November 2008(2007);
   45. Revenue Form 61A207(B), "Report of Owned Vessels - In Possession of Others", November 2008(2007);
   47. Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", November 2008(2007);
   48. Revenue Form 61A207(D), "Valuation Worksheet", November 2008(2007);
Assessment*, January 2008 [July 2006];
113 [167] Revenue Form 62A363, "County Clerk's Claim for Preparing Tally Bills", December 2007;
114 [168] Revenue Form 62A363-B, "County Clerk's Claim for Preparing Tally Bills", December 2007;
139 [143] Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", February 2006;
143 [127] Revenue Form 62A398, "Property Valuation Administrator's Bond", November 2006;
144 [128] Revenue Form 62A399, "Notice to Appear in Circuit Court", August 1983;
146 [140] Revenue Form 62A401, "Final Notice Before Distrain", August 1983;
147 [141] Revenue Form 62A405, "Notice of Sale of Tax Bill", October 1991;
153 [147] Revenue Form 62A500-51, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", November 2008 [October 2007];
155 [149] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", November 2008 [2007];
159 [143] Revenue Form 62A652, "Certification of Tax Rate for Bank Deposits Franchise Tax", October 2008 [November 2007];
162 [146] Revenue Form 62A880, "Personal Property Assessment", October 2004;
163 [147] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", November 2008 [2007];
168 [145] Revenue Form 62F301, "Appeal to Local Board of Assessment Appeals", February 2006; and
(b) Severance taxes - referenced material:
1. Revenue Form 10A100, "Kentucky Tax Registration Application", June 2006 [January 2005];
2. Revenue Form 164A04, "Application for Certificate of Registration for Coal, Coal Seams and/or Processors", December, 2006;
3. Revenue Form 55A002, "Certificate of Registration - Severance Taxes", December, 2006;
5. Revenue Form 55A100, "Coal Tax Return", July 2004;
6. Revenue Form 55A100, "Part IV - Schedule of Coal Sales (Continuation)" and "Part V - Schedule for Thin Seam Coal Tax Credit", August 2005;
7. Revenue Form 55A101, "Coal Tax Return Instructions",
August 2005,
[6:47] Revenue Form 55A131, "Credit Memorandum", December 2006;
[7:46] Revenue Form 55A209, "Severance Tax Refund Application", December 2006;
[9:46] Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", July 2004;
[17:48] Revenue Form 56A113, "Minerals Tax Credit for Lime Stone Sold in Interstate Commerce", November 1997; and

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THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: May 14, 2009
FILED WITH LRC: May 14, 2009 at 4 p.m.
CONTACT PERSON: De Von Hankins, policy advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(As Amended at ARRS, July 14, 2009)

201 KAR 1:065. Individual license renewal and fee.

RELATES TO: KRS 325.330
STATUTORY AUTHORITY: KRS 325.240, 325.330 NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330 authorizes the board to promulgate administrative regulations establishing license renewal procedures for certified public accountants[establishesthe standards for license renewal and fees for certified public accountants]. This administrative regulation establishes[describes] the procedures and fees for a certified public accountant to renew a license.

Section 1. A certified public accountant[person] seeking to renew his or her license shall:
(1) Utilize the online procedure offered by the board at www.cpaky.gov; and
(2) Pay a renewal fee in the amount of $100[submit
(1) The computer-generated renewal form sent by the board;
(2) A check or money order made payable to the "Kentucky State Board of Accountancy" in the amount of $100; and
(3) A continuing professional education report as required by 201 KAR 1:106].

Section 2. (H) If a certified public accountant is unable to utilize the online procedure, he or she shall:
(1)[(a)] Submit a written request to the board staff to obtain a paper application to the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Ky 40202;
(2)[(b)] Complete and submit the application to the board; and
(3)[(c)] Submit a check or money order made payable to the Kentucky State Board of Accountancy in the amount of $100.

Section 3. A license shall expire on July 1 of the second year following the date it was issued and shall be subject to renewal as follows:
(1) Even-numbered licenses shall be renewed in even-numbered years, and odd-numbered licenses shall be renewed in odd-numbered years.
(2) Even-numbered licenses shall be renewed in even-numbered years; and odd-numbered licenses shall be renewed in odd-numbered years.

Section 4. The board shall notify a licensee that his or her license is due to expire[4] in May of the licensee's renewal year, the board shall send a computer-generated license renewal notice to the licensee at the address on file with the board.
(2) The licensees shall return the renewal form as indicated in Section 1 of this administrative regulation correcting, deleting or adding to the information on file.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

REBECCA PHILLIPS, CPA, President
APPROVED BY AGENCY: May 12, 2009
FILED WITH LRC: May 13, 2009 at noon
CONTACT PERSON Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(As Amended at ARRS, July 14, 2009)

201 KAR 1:100. Continuing professional education requirements.

RELATES TO KRS 325.330
STATUTORY AUTHORITY: KRS 325.240, 325.330(4)(a), (7) NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330(4) requires the board to promulgate administrative regulations establishing continuing professional education requirements for certified public accountants[establishes the requirements to renew a license as a certified public accountant]. This administrative regulation establishes the continuing professional education requirements a certified public accountant[an applicant] shall satisfy to renew[for renewal of] a license.

Section 1. Definition[Definition]. "Continuing professional education hour or CPE hour" means a fifty (50) minute period excluding meals, breaks and business sessions. Each unit of credit for [earned for] university or college course[s]course[s], each unit of credit shall equal the following continuing professional education[education contact] hours:
(1) One (1) semester hour equals fifteen (15) CPE hours; and
(2) One quarter hour equals ten (10) CPE hours.
Section 2. Requirements for Continuing Professional Education Credit. (1) [Effective with license renewal for July 1, 2002 and subsequent years.] Each licensee who worked 3,000 hours or more in a public accounting firm registered with the board during the two (2) calendar years prior to the renewal date of his or her/her license shall report to the board successful completion of eighty (80) hours of continuing professional education. The eighty (80) hours shall be earned during the preceding two (2) calendar years. All other licensees shall obtain sixty (60) hours.

(2) Effective with license renewal for July 1, 2010 and subsequent years, each licensee shall report to the board successful completion of two (2) hours of continuing professional education in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) hours a licensee is required to complete to renew his or her/her license.

(3) A certified public accountant who for the majority of the two (2) calendar years prior to renewal of his or her license did not operate or work in an office in this state, A licensee seeking renewal of his or her license in this state who at the time of renewal his principal office is located in another state, shall satisfy the requirements of this section by complying with the following:

(a) A certified public accountant who for the majority of the two (2) calendar years prior to renewal of his or her license did not operate or work in an office in this state shall submit to the board a statement indicating that the requirements of this section have been satisfied.

(b) If the state designated by paragraph (a) of this subsection does not have a continuing professional education requirements, the licensee shall submit to the board a letter indicating that the requirements of this section have been satisfied.

(c) The board may waive the requirements of this section for a licensee who has completed the requirements of a continuing professional education requirements of a similar state.

(d) The board may grant a waiver to a licensee who has completed the requirements of a continuing professional education requirements of a similar state.

Section 3. Each licensee who holds a license for less than a full two (2) calendar year period shall be required to obtain two (2) hours of continuing professional education for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the hours completed in this time period.

Section 4. Waivers From Continuing Professional Education. (1) The request for a reduction in or waiver of the continuing professional education requirements shall be submitted on a form approved by the board.

(2) A reduction or waiver may be granted by the board if the licensee submits evidence that the requirements of the continuing professional education requirements are met.

(a) Establishes that he or she is physically or psychologically unable to complete the continuing professional education requirements.

(b) Has encountered a severe personal hardship which made it extremely difficult or impossible to meet the continuing professional education requirements.

(c) Is completely retired from practice and is fifty-five (55) years of age or older.

(3) The board shall advise a licensee in writing whether the request is approved or denied. The board shall notify the applicant in writing of the decision and the reasons for the decision.

(4) A licensee granted a waiver shall be provided a notice of the waiver when the license is renewed.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify:

(1) Programs of other organizations (accounting, industrial, professional, etc.)

(2) Firm meetings for staff or management groups which are structured as formal education programs. Portions of these meetings devoted to the communication and application of general professional policy or procedure may qualify. However, portions devoted to firm administrative, financial, and operating matters shall not qualify.

(3) Formal individual study courses, Web casts, and online learning courses (programs).

(a) The amount of credit to be allowed for any correspondence and formal individual study course (programs, including taped-study programs) shall be recommended by the course (program) sponsor.

(b) A licensee claiming credit for an [Leonese Claiming Credit for a Even correspondence or formal individual study course (courses) shall require evidence of satisfactory completion of the course from the course (program) sponsor.

(c) Evidence of satisfactory completion in this section shall be indicated by a sponsor verification of completion of a workbook or examination on the subject matter.

(d) Credit shall be assigned to the reporting period in which the number of credits (allowed in the renewal period in which the course was completed.

(e) Service as lecturer, discussion leader, or speaker.

(f) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(g) Credit may be claimed for actual preparation time up to two times the class contact hours.

(2) Credit as an instructor, discussion leader or speaker may be claimed if the presentation (session) is one which would meet the continuing professional education requirements of Section 6 of this administrative regulation.

(d) No] Credit shall not be granted for repetitive presentations of group programs unless it can be demonstrated that the program content was substantially changed and the such change required significant additional study or research.

(e) Maximum credit for [such] preparation and teachings shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) Credit may be awarded for published articles or books [[provised] they contribute directly to the professional competence of the licensee.

(b) Credit for preparation of the such publications may be given on a self-declaration basis up to twenty-five (25) percent of the total education hours required.

(c) In exceptional circumstances, a licensee may request additional credit by submitting the article or book to the board with an explanation of the circumstances which he or she believes [feels] justifies a greater amount of credit.

(d) The board shall determine the amount of credit to be granted.

Section 7. Reporting and Controls. (1) Each licensee shall: (i) Be responsible of each licensee to obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) This documentation shall be retained by each licensee for a period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew their license information submitted by the licensee for renewal of his or her license.

(4) Course completion evidence shall consist of [be] a document prepared by the course sponsor indicating the licensee completed [heating participation in] a formal program of learning.

A document shall include the following:

(a) Name of the program sponsor;

(b) Title and description of course content;

(c) Dates attended; and

(d) Location; and

(e) Number of continuing professional education [contact] hours awarded.

(f) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of the or her employer may submit to the board a list of the courses completed if the list contains:

(a) Information described in subsection (f) of this section; and

(b) Signature of the person at the licensee’s place of employment who verifies the accuracy of the [such] information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to register with the board.

(2) Detailed records of each program shall be kept by the sponsor which shall include:

(a) The date and location of the program presentation;

(b) The name (names) of each instructor or discussion leader;

(c) A list of licensees attending each program presentation; and

(d) A written outline of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

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

(a) [Initial Request for Waiver of CPE Requirements [Waiver]], 2009;

(b) [License Renewal-CPE Waiver Due to Medical of Personal Hardship], 2009; and

(c) [License Renewal-CPE Retirement Waiver], 2009 [Continued Professional Education Waiver (2001)] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

REBECCA PHILLIPS, CPA, President
APPROVED BY AGENCY: May 12, 2009
FILED WITH LRC: May 13, 2009 at noon
CONTACT PERSON: Richard C. Carroll, executive director, Kentucky State Board of Accountancy, 332 W Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 585-3037, fax (502) 585-4281.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, July 14, 2009)

201 KAR 2:045. Technicians.

RELATES TO KRS 315.010(18), 315.020(4)(b), 315.191(1)(a), (g), (l)

STATUTORY AUTHORITY: KRS 315.010(18), 315.020(4)(b), 315.191(1)(a), (g), (l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations governing pharmacy technicians. KRS 315.010(18) authorizes the board to permit a pharmacy technician to work under the general supervision of a pharmacist. KRS 315.191(1)(l) authorizes the board to promulgate administrative regulations establishing the qualifications a pharmacy technician is required to obtain prior to practicing under the general supervision of a pharmacist. This administrative regulation establishes the qualifications required for a pharmacy technician to practice under the general
supervision of a pharmacist, and establishes the scope of practice for a pharmacy technician.

Section 1. A person shall be recognized by the board as a certified pharmacy technician, if:
(a) He has completed the National Certification Examination administered by the Pharmacy Technician Certification Board or the Institute for the Certification of Pharmacy Technicians (ICPT), and
(b) The certificate issued by the Pharmacy Technician Certification Board or the ICPT is current; or
(c) He has successfully completed the Nuclear Pharmacy Technician Training Program at the University of Tennessee or
the Nuclear Pharmacy Technician Training Program at the University of Tennessee.

Section 2. A certified pharmacy technician, subject to the supervision as defined by KRS 315.010(25), of a pharmacist may perform the following functions:
(1) Certify for delivery unit dose mobile transport systems that have been refilled by another technician;
(2) Within a nuclear pharmacy, receive diagnostic orders, and
(3)(a) Initiate or receive a telephonic communication from a practitioner or practitioner's agent concerning refill authorization, after he clearly identifies himself as a certified pharmacy technician;
(b) If a practitioner or practitioner's agent communicates information that does not refer to the refill authority:
1. A technician shall immediately inform the pharmacist, and
2. The pharmacist shall receive the communication.

Section 3. (1) A technician who has not been certified by the Pharmacy Technician Certification Board or the ICPT may perform the functions specified by Section 2 of this administrative regulation under the immediate supervision of a pharmacist.
(2) A function performed by a certified pharmacy technician or pharmacy technician shall be performed subject to the review of the pharmacist who directed the technician to perform the function.
(3) A pharmacist who directs a certified pharmacy technician or pharmacy technician to perform a function shall be responsible for the technician and the performance of the function.

CATHERINE SHELBY, President
APPROVED BY AGENCY: March 11, 2009
FILED WITH LRC: April 13, 2009 at 4 p.m.
CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 602, 2824 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2820, fax (859) 246-2823.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 14, 2009)

RELATES TO: KRS 314 041(1), 314 061(1), 314 111(1), 314 131(2)
STATUTORY AUTHORITY: KRS 314 131(1), (2)
NECESSITY: FUNCTION, AND CONFORMITY: KRS 314 111(1) and 314 131(2) require that the board approve [these standards] and conform to KRS 314 131(1), (2)

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:
(1) A governing institution.
(a) The governing institution shall[which] establishes and conducts the program of nursing and shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. [United States] Department of Education [such as the southern association of colleges and schools or the appropriate accrediting body].
(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.
(c) The governing institution shall:
1. Designate a program[license] administrator for the prelicensure[licensure] program who is qualified pursuant to 201 KAR 20:260.
2. Effective July 1, 2010, assure that at least fifty (50) percent of the program[license] administrator's time shall be devoted to the program's needs [administrative regulation (a)] and shall not be available to complete the duties specified in this administrative regulation (b).

3. Establish administrative policies, and
4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;
5. Establish administrative policies, and
6. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;
7. Establish administrative policies, and
8. Provide written policies for faculty relating to qualifications for the position, rights and responsibilities of the position, and evaluation of performance, workload, promotion, retention, and tenure;
9. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and
10. Provide for the security, confidentiality, and integrity of faculty employment records.

The governing institution shall provide an administrative chart that describes the organization of the program of nursing and its relationship to the governing institution.
(2) Administrative policies.
(a) There shall be written administrative policies for the program of nursing that shall be:
1. [Which are] In accordance with those of the governing institution;
[2] and
2. [Are] Available to the board for review.
(b) The board shall be notified in writing of any vacancies or pending vacancies in the position of the program[license] administrator within fifteen (15) days of the program's awareness of the vacancy or pending vacancy.

(2) The program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

- 322 -
1. The effective date of the vacancy.

2. The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae.

3. If there is to be a plan[ ] leave between the date of the vacancy and the date the newly-appointed program administrator assumes [his] duties, the head of the governing institution shall submit a plan of transition to insure the continuity of the program.

b. Progress reports shall be submitted [for] requested by the board.

4. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

5. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.

b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program or to the extension program shall be implemented.

(d) There shall be a written contract between the governing institution and the program that provides a learning experience for a student.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause (ten or less) by either party.

(c) A program of an interim program[nurse] administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Within thirty (30) days of appointment, submit the qualifications of all nurse faculty and clinical instructors to the board.

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program and program outcomes;

(f) To facilitate continued development and implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health-related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Policies related to student conduct that incorporate the standards of safe nursing care;

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the orientation of continuing academic and professional development for the nurse faculty;

(h) To coordinate:

i. The development and negotiation of contracts with clinical facilities.

ii. The number and variety of which clinical agencies shall be acceptable to meet current or future outcomes;

2. To coordinate also:

i. The development of selection and evaluation criteria for clinical facilities and ensure that the criteria shall be utilized by the program of nursing.

(i) The establishment of student nurse/graduate nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients/clients shall be defined in light of safety, learning objectives, student level, and patient acuity.

2. The student/nurse ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or preceptor experiences. Observational experiences shall include an assignment by which a student observes nursing staff in the academic setting where a student observes nursing and where the student does not participate in direct patient or client contact but shall have access to a clinical instructor as needed.

3. The ratio shall not apply to on campus skill lab experiences.

(j) The criteria to determine the student:nurse ratio shall include:

1. Acuity level of the patient population;

2. Clinical preparation of faculty;

3. Behavioral objectives for students in clinical rotation;

4. Contract with clinical agencies;

5. Physical setting for student experience;


7. Maximum ratios (excluding observational experiences) shall not exceed a maximum of ten (10) to one (1) in the clinical practice experience.

(k) The submission of the "[Certified List of Kentucky] Program of Kentucky Nursing Graduates," as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma or certificate;

(l) The development and maintenance of an environment conducive to the teaching and learning process.

(m) To ensure that equipment, furnishings, and supplies shall be current and replaced in a timely manner.

(n) To ensure that the nurse faculty shall have sufficient time to accomplish those activities related to the teaching-learning process.

(o) To facilitate an orientation to the roles and responsibilities of full-time, adjunct nurse faculty, and clinical instructors in the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved and/or achieved;

(p) To facilitate regular communication with the full-time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing.

(q) To ensure that recruitment materials shall provide accurate and complete information to prospective students about the program including:

1. Nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

2. Length of the program;

3. Current cost of the program; and

4. Transferability of credits to other public and private institutions in Kentucky.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(g) Develop and implement student evaluation methods and tools to measure the progression of the student's cognitive, effective, and psychomotor achievement in courses and clinical outcomes based on published norms and sound rationales.

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility.

(i) Establish clinical outcomes within the framework of the course.

(j) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site.

(k) Assume responsibility for utilizing the criteria in the selection of clinical sites and the evaluation of clinical experiences on a regular basis.

(l) Evaluate the student's experience, achievement, and progress in relation to course or outcomes, with input from the clinical instructor and preceptor, if applicable; and

(m) Utilize.

(n) Clinical instructors with shall have governance in the following areas:

(o) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled.

(p) Clarify with the nurse faculty member:

(q) The role of the preceptor;

(r) The course responsibilities;

(s) The course or clinical outcomes;

(t) A course evaluation tool;

(u) Four situations in which neuro-clinical outcomes; a course evaluation tool; and situations where collaboration and consultation are needed; and

(v) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes.

Section 3. Notification of Increased Enrollment. (1) A program of nursing shall notify the board of an increase in enrollment by more than twenty (20) percent or thirty (30) students, whichever is greater.

(a) The notification shall be in writing within five (5) days of occurrence of the increase.

(b) The notification shall demonstrate that the program has sufficient resources to fulfill the standards established by the administrative regulation for the anticipated increase in enrollment.

(2) The board shall [reevaluate] conduct a site visit to determine if the program has sufficient resources.

JIMMY WISENGER, President
APPROVED BY AGENCY: April 23, 2009
FILED WITH LRC: May 12, 2009 at 9 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRFS, July 14, 2009)

302 KAR 100:030. Procedures for determination of agricultural productivity diminishment in subdivision.

RELATES TO: KRS 262.900, 262.906, 262.910(262.910, 262.906)

STATUTORY AUTHORITY: KRS 262.906, 262.910(262.910, 262.906)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.906 requires the Purchase of Agricultural Conservation Easement Corporation to implement a purchase of Agricultural Conservation Easement Program, including the development and promulgation of necessary administrative regulations. KRS 262.910 requires the Purchase of Agricultural Conservation Easement Corporation to approve proposed subdivisions of land restricted by an agricul-
tural conservation easement unless the [unlike] subdivision will diminish or impair the agricultural productivity of the restricted land. This administrative regulation creates a minimal acreage deemed by the PACE Board beyond which further subdivision would harm the agricultural value of the restricted land [agricultural value].

Section 1. Minimum Acreage Requirement. Any division of land restricted by an agricultural conservation easement that will restrict[ed-land that shall] result in any remaining parcel being less than fifty (50) acres shall be deemed to impair the agricultural productivity of the restricted land.

Section 2. Limit on Number of Divisions. Any further division of restricted land after an approved initial request shall be deemed to impair the agricultural productivity of the restricted land.

Section 3. Election to Waive Subdivision Rights. (1) Any owner of land may elect to expressly waive subdivision rights when the property enters into the Purchase of Agricultural Conservation Easement Program. This election shall be filed with the conservation easement. This election shall be irrevocable once recorded. The PACE Board shall not grant subdivision requests in the future [when] this express waiver is recorded.

(2) Any owner of restricted lands may record an amendment to his or her easement to expressly waive subdivision rights of property in the Purchase of Agricultural Conservation Easement Program. This election shall be irrevocable once recorded. The PACE Board shall not grant subdivision requests in the future [hereafter] this express waiver [is] recorded with the amendment to the conservation easement.

(3) Any subsequent owner of restricted land shall take ownership subject to the recorded election to waive subdivision rights, and that election by the prior owner[shall-owner(s)] shall remain valid and binding on the PACE Board.

RICHE FARMER, Commissioner of Agriculture
APPROVED BY AGENCY: April 15, 2009
FILED WITH LRC: May 15, 2009 at noon
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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, July 14, 2009)

900 KAR 6:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27), 216B.040(2)(a)2a NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary
APPROVED BY AGENCY: April 14, 2009
FILED WITH LRC: April 15, 2009 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, July 14, 2009)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2292-216.2299
STATUTORY AUTHORITY: KRS 216.2293(3), 216.2295 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2295 requires that the Cabinet for Health and Family Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2293(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2290 (1).

(3) "Cabinet [is defined by KRS 216.2292(2), means the Cabinet for Health and Family Services or its agent."

(4) "Coding and transmission specifications" or "Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals" or "Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities" means the document containing the technical directives that address issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2290(6)[216.2290(6)]

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for [and shall not include] inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds, and hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" services performed on an outpatient basis in a hospital in accordance with Section 312(2)(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 413 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals or the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.[A licensed outpatient facility that is a Medicare-provider-based entity]
of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals or the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837I), the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13(42) of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services, as defined in Section 1 of this administrative regulation, they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13(42) of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13(42) of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient service, as defined in Section 1 of this administrative regulation, they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14(43) of this administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14(43) of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be deemed final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of whether the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payer.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbillable.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(e) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a data log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(41) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(41) of this administrative regulation and at a reasonable frequency convenient to a provider(s)(44) of the administrative regulation and at a frequency a provider deems convenient for accumulating and submitting batch data.

Section 7. Data Corrections for Hospitals. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of editing.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Inpatient and Outpa-
tient Coordinator Manual for Kentucky Hospitals.
(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.
(3) Percentage error rate.
(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.
(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.
(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.
(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

Section 8(7) Data Corrections for Ambulatory Facilities. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.
(2) Time permitted for corrections The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.
(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.
(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.
(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.
(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.
(3) Percentage error rate.
(a) When editing data upon its Initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.
(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.
(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

Section 9(3) Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8(4), and 9(5), and 7 of this administrative regulation shall be assessed a fine of $500 per violation.
(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.
(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.
(4) Fines during a calendar year shall not exceed $1,500 per provider.

Section 10(9) Extension or Waiver of Data Submission Time-lines. (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.
(a) Providers shall request an extension or waiver from the Office of Health Policy no later than the last day of the data reporting period to receive an extension or waiver for that period.
(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.
(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:
(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;
(b) The severity of the event prompting the request; and
(c) Whether the provider continues to gather and submit the information necessary for billing.
(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 11(10) Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(9) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.
(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.
(b) Appeals shall be filed in accordance with KRS Chapter 13B.
(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.
(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 12(11) Working Contacts for Providers. (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.
(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.
(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.
(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 13(12) Required Data Elements for Hospitals. (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.
(a) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals.
(b) Additional data elements, as specified in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals, shall be required by the cabinet to facilitate proper collection and identification.
Section 15.[14.] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals", updated April 27, 2009;
(b) "Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities", updated April 27, 2009.
(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4)

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary
APPROVED BY AGENCY: May 15, 2009
FILED WITH LRC: May 15, 2009 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at AHRS, July 14, 2009)


RELATES TO: KRS 211.180, 212.210, 218A.1431, 224.01-410, 224.09-019(14), 15(15)[224.01-410, 218A.1431],[224.09-019] STATUTORY AUTHORITY: KRS 211.180, 212.210, 224.01-410(9)(10)[224.01-410(9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410(9) requires the Department for Public Health to promulgate administrative regulations to establish requirements for notices, notice posting, and notice removal for an inhabitable property contaminated with methamphetamine. KRS 224.01-410(10) requires the Department for Public Health to promul-
gate administrative regulations to establish disclosure requirements for a methamphetamine property if the property is to be leased, rented, or sold. This administrative regulation establishes standards for the posting and removal of warning signs for a methamphetamine-contaminated property and establishes disclosure and appeal procedures for the owner of a methamphetamine-contaminated property if the property is to be leased, rented, or sold.[224:01-410 requires the Secretary of the Cabinet for Health and Family Services to promulgate regulations to carry out the provisions of KRS 224:01-410, Methamphetamine Contamination—Standards and Procedures for Assessment and Decontamination of Inhabitable Property. This administrative regulation establishes standards for the posting and removal of warning signs for methamphetamine-contaminated properties and establishes disclosure and appeal procedures for the owner of a methamphetamine-contaminated property that are necessary to ensure the health and safety of the public.]

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services.

(2) "Commissioner" means the commissioner of the Kentucky Department for Public Health.

(3) "Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria Form (TASS), DEP 1016 means the evaluation tool incorporated by reference in 401 KAR 101:030 and used by law enforcement to determine the tiered level of methamphetamine contamination within the inhabitable property.

(4) "Decontaminated" means the removal of methamphetamine contamination from an inhabitable property in a manner in accordance with 401 KAR 101:040.

(5) "Disclosure" means the notification made by the owner of a methamphetamine contaminated property to a potential buyer, lessee, or renter of that property advising them that the property is contaminated.

(6) "Methamphetamine Disclosure Statement" means the documentation provided by the property owner to the potential buyer, lessee, or renter that conforms to the requirements established in Section 4(2)(a) contained within Section 4(3) of this administrative regulation.

(7) "Notice of Methamphetamine Contamination" means the form DFS 407 used to denote methamphetamine contamination within an inhabitable property.

(8) "Posted(Posted)" or "posting" means the physical affixing of the Notice of Methamphetamine Contamination to the entrances of an inhabitable property with one (1) or more rooms with the provision for living, sanitary, and sleeping facilties arranged for the use of one (1) family or individual.

(9) "Release" means the authorization by the cabinet for the removal of the posted Notice of Methamphetamine Contamination and an authorization to the property owner that all disclosure requirements established in this[inserted within this] administrative regulation are no longer applicable.

Section 2. Posting of Property. (1) Upon written notification received from law enforcement that an inhabitable property has been found to contain evidence of methamphetamine contamination and has had posted(affixed) a Notice of Methamphetamine Contamination on all exterior entrances to the inhabitable property, the local health department shall require from the responding law enforcement agency a copy of the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria Form (TASS), DEP 1016, incorporated by reference in 401 KAR 101:030 from responding law enforcement agency.

(2) Upon receipt of the issuance of a Notice of Methamphetamine Contamination by law enforcement, the local health department shall within ten (10) business days:

(a) Notify by certified mail the property owner listed on the deed of the inhabitable property that the property has been posted with a Notice of Methamphetamine Contamination;

(b) Notify the cabinet in writing that a Notice of Methamphetamine Contamination has been posted upon the property;

(c) Provide the cabinet with a copy of the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria Form (TASS), DEP 1016;

(d) Notify the Kentucky State Police Methamphetamine Coordinator;

(e) Notify the Energy and Environment Cabinet Superfund Branch.

Section 3. Appeals Process. (1) [Any homeowner listed on the deed of the property who has received a Notice of Methamphetamine Contamination and who believes that the notice has been issued improperly may make a written request of appeal to the Commissioner of Public Health, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days of the date the notice was posted on the property.

(2) Upon receipt of an appeal, the commissioner shall forward the request to the Administrative Hearings Branch, which shall set the date, time, and place for the hearing requested within sixty (60) days of the date postmarked on the appeal envelope/receipt of appeal.

(3) The notice of appeal hearing shall conform to KRS 138.050;

(4) The appeal hearing shall be conducted by a hearing officer appointed by the commissioner and in accordance with KRS 138.080, 138.090, and 138.110.

(5) The hearing officer shall make a recommended order in accordance with KRS 138.110.

(6) The secretary shall:

(a) [issue a final order in accordance with KRS 138.120 after receipt of the hearing officer's recommended order; and

(b)[issue a final order in accordance with KRS 138.120 and] Forward a copy of the final order to the Department of Public Health.

(7) An official record of the appeal hearing complying with KRS 138.130 shall be retained by the Cabinet for Health and Family Services' Administrative Hearings Branch.
Section 5. Removal of the Posting. (1) The local health department shall authorize the removal of the Notice of Methamphetamine Contamination if:[where]:
(a) The property has been decontaminated and written approval for release by the Energy and Environment Cabinet has been received, or
(b) A properly submitted appeal as established in subsection (1) of this section has been completed.

(2) The local health department shall notify, in writing within ten business days of notification, the property owner on the deed of the property that:
(a) The Notice of Methamphetamine Contamination has been authorized to be removed from the premises of the property; and
(b) Disclosure requirements no longer apply.

(3) The local health department shall notify within ten business days the Division of Waste Management, the Kentucky State Police Methamphetamine Coordinator that the property has been released.

(4) The local health department shall retain copies of any notifications of release from Energy and Environmental Cabinet for at least seven years.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DFS 407, Notice of Methamphetamine Contamination", July 2009; and
(b) "DFS 407, Notice of Methamphetamine Contamination", 2007 (Edition is incorporated by reference).

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

WILLIAM D. HACKER, MD, FAAP, CPE Commissioner

APPROVED BY AGENCY: May 13, 2009

FILED WITH LFC: May 14, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations
(As Amended at AARRS, July 14, 2009)

907 KAR 1:28. Independent laboratory and radiological service coverage and reimbursement. [Other-laboratory and x-ray services.]


NECESSITY, FUNCTION, AND CONFORMITY: [-EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to the coverage of radiological and reimbursement for independent laboratory and radiological services.

Section 1. Definitions. (1) "CMS" means the Centers for Medicare and Medicaid Services.

(2) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(3) "Covered benefit" or "covered service" means an independent laboratory or radiological service for which the department shall reimburse.

(4) "CPT" means the current procedural terminology coding system.

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

(6) "Incidental" means a medical procedure or service which:
(a) Is performed at the same time as a more complex primary procedure or service; and
(b) Requires little additional resources; or
(c) Is clinically integral to the performance of the primary procedure or service.

(7) "Independent laboratory" means a laboratory which:
(a) Is certified by CMS under the CLIA to perform laboratory services;
(b) Is independent of an institutional setting;
(c) Is a Medicare-participating facility;
(d) Meets the requirements established in 42 C.F.R. Part 493 regarding laboratory certification, registration, or other accreditation as appropriate, and
(e) Is a Medicare-enrolled provider.

(8) "Laboratory director" means an individual meeting the director of laboratory qualifications established in KRS 333.0901.

(9) "Medically necessary" or "medical necessity" means a covered benefit determined to be needed in accordance with 907 KAR 1:671.

(10) "Medically necessary" or "medical necessity" means a covered benefit determined to be needed in accordance with 907 KAR 3:139.

(11) "Medicaid-participating" means certified by CMS and accepting reimbursement from Medicaid.

(12) "Mutually exclusive" means two (2) laboratory or radiological services:
(a) Not reasonably provided in conjunction with one (1) another during the same patient encounter on the same date of service; or
(b) Representing:
1. Duplicate or very similar items; or
2. Medically inappropriate use of CPT codes.

(13) "Prescriber" means a physician, podiatrist, osteopath, dentist, oral surgeon, advanced registered nurse practitioner, or physician's assistant who:
(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;
(b) Is in good standing with;
1. The licensure board of jurisdiction for the provider's practice; and
2. CMS;
(c) Has the legal authority to write an order for a medically necessary service for the recipient and
(d) If enrolled as a Kentucky Medicaid provider, is in compliance with all requirements of 907 KAR 1:671 and 1:672.

(14) "Radiological service" means a service in which X-rays or rays from radioactive substances are used for diagnostic or therapeutic purposes.

(15) "Recipient" is defined in KRS 205.845(1).

(16) "Usual and customary" means the uniform amount which a provider charges the general public for a specific procedure or service.

Section 2. Coverage. (1) The department shall reimburse for a procedure provided by an independent laboratory if the procedure:
(a) Is one that the laboratory is certified to provide by Medicare and in accordance with 907 KAR 1:575;
(b) is a covered service within the CPT code range of 80047-89356 except as excluded in Section 3 of this administrative regulation;

(c) is prescribed in writing or by electronic request by a physician, podiatrist, dentist, oral surgeon, advanced registered nurse practitioner, or optometrist; and

(d) is supervised by a laboratory director.

(2) The department shall reimburse for a radiological service if the service:

(a) is provided by a facility that:

1. is licensed to provide radiological services;

2. meets the requirements established in 42 C.F.R. 440.30;

3. is certified by Medicare to provide the given service;

4. is a Medicare-participating facility;

5. meets the requirements established in 42 C.F.R. Part 443 regarding laboratory certification, registration, or other accreditation as appropriate; and

6. is a Medicaid-enrolled provider;

(b) is prescribed in writing or by electronic request by a physician, oral surgeon, dentist, podiatrist, optometrist, advanced registered nurse practitioner, or a physician’s assistant;

(c) is provided under the direction or supervision of a licensed physician; and

(d) is a covered service within the CPT code range of 70010-78999.

Section 3. Exclusions. The department shall not reimburse for an independent laboratory or radiological service under any of this administrative regulation for the following services or procedures:

(1) A procedure or service with a CPT code of 92800-93399;

(2) A procedure or service with a CPT code of 92920-93358;

(3) A service provided to a resident of a nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability or a court-ordered laboratory or toxicoology test.

Section 4. Reimbursement. (1) The department shall reimburse an independent laboratory the current Medicare rate established by CMS:

(a) For Kentucky;

(b) For the covered service or procedure; and

(c) In accordance with 42 U.S.C. 1395(h)(1)(A).

(2) Reimbursement for a service provided by an independent laboratory shall not exceed the limit established in 42 U.S.C. 1395b(2).

(3) The department shall reimburse a Medicaid-enrolled provider licensed to provide radiological services:

(a) The provider’s usual and customary charge for the service; and

(b) Not to exceed sixty (60) percent of the upper payment limit established for the procedure in the Medicare physician fee schedule pursuant to 907 KAR 3:010.

Section 5. Provider Participation Conditions. (1) To be reimbursed by the department for a service provided in accordance with this administrative regulation, a provider of independent laboratory services or radiological services shall,

(a) Be a Medicaid-enrolled provider;

(b) Comply with 907 KAR 1:650 and 1:672;

(c) Comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d-8 and 45 C.F.R. parts 160 and 164; and

(d) Annually submit documentation of:

1. Current CLIA certification to the department if the provider is an independent laboratory; and

2. A current radiological license to the department if the provider provides radiological services.

(e) A provider may bill a resident for a service not covered by the department if the provider informed the recipient of noncoverage prior to providing the service.

Section 6. Appeal Rights. (1) An appeal of a department decision regarding a recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:660.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:661.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) A laboratory service or x-ray service for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and medically needy.

Section 4. Covered Services. (a) A laboratory service provided by a participating independent laboratory shall be limited to those procedures:

(c) For which the laboratory is certified under Medicare and in accordance with 907 KAR 1:675;

(d) Prescribed by a physician, podiatrist, dentist, optometrist, or a person authorized by the physician, podiatrist, dentist, or optometrist, if the physician, podiatrist, dentist, or optometrist approved the services;

(e) X-ray services (radiological services including x-rays, ultrasound, computer-assisted tomography, and magnetic resonance imaging) shall be limited to those procedures provided by a facility licensed to provide radiological services and which meets the requirements of 42 C.F.R. 440.30 with the following limitations:

(a) The facility shall participate in the Medicare Program;

(b) The procedure shall be ordered by a licensed physician, oral surgeon, dentist, podiatrist, optometrist or a person authorized by the physician, oral surgeon, dentist, podiatrist, or optometrist, if the physician, oral surgeon, dentist, podiatrist, or optometrist approved the service;

(c) The service shall be provided under the direction or supervision of a licensed physician; and

(d) The facility shall meet the requirements of 42 C.F.R. Part 403 with regard to laboratory certification, registration, or other accreditation as appropriate.

Section 5. Incorporation by Reference. (1) Independent Laboratory and Other Lab and X-Ray Services Manual, August 1996 edition, Department for Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, Cabinet for Health and Family Services, 276 East Main Street, Frankfort, Kentucky 40624, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANE MILLER, Secretary
APPROVED BY AGENCY: May 4, 2009
FILED WITH LRC: May 7, 2009 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7095, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at AFRS, July 14, 2009)


NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-728, effective July 9, 2004, recognized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. KRS 200.660 requires the cabinet to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early
Intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an annual review by the Department for Public Health, or its agent, for compliance with 911 KAR Chapter 2;
(2)(a) Meet the qualifications for a professional or paraprofessional established in 911 KAR 2:150;
(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 911 KAR 2:150;
(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall attend training on First Steps’ philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;
(4) Agree to provide First Steps services according to an individualized family service plan as required in 911 KAR 2:150;
(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to Insure compliance with 911 KAR Chapter 2;
(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and
(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided.

1. A charge submitted to the Department for Public Health shall be the provider’s usual and customary charge for the same service.

2. The fixed upper limit for services shall be as follows:
   (a) Primary service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person in the family’s life.
      1. In the office, the fee shall be sixty-one (61) dollars per hour of service.
      2. In the home or community site, the fee shall be eighty-three (83) dollars per hour of service.
   (b) Initial service coordination. Initial service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person.
      1. In the office, the fee shall be sixty-eight (68) dollars per hour of service.
      2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of service.
   (c) Primary level evaluation. The developmental component of the primary level evaluation for a [name established-risk] child without an established risk condition, shall be provided by face-to-face contact with the child and parent.
      1. In the office or center-based site, the fee shall be $279.00 per service event.
      2. In the home or community site, the fee shall be $279.00 per service event.
   (d) Five (5) Area Assessment. The developmental component of the primary level evaluation for the [established-risk] child with established risk shall be provided by face-to-face contact with the child and parent.
      1. In the office or center-based site, the fee shall be $175 per service event.
      2. In the home or community-based site, the fee shall be $175 per service event.
   (e) Record review. A record review shall be provided by a Department for Public Health approved team. The fee shall be $300 per service event.
   (f) Intensive clinic evaluation. The intensive level evaluation shall be provided by face-to-face contact with the child and parent.
      1. In the office or center-based site, which involves a board certified physician, the fee shall be $1,100 per service event.
      2. In the community site, which involves a board certified physician, the fee shall be $1,100 per service event.
      3. In the office or center-based site, without a board certified physician, the fee shall be $400 per service event.
      4. In the community site without a board certified physician, the fee shall be $400 per service event.
   (g) Therapeutic intervention, service assessment or collateral services in accordance with Section 3(3), (4), (6) and (7) of this administrative regulation:
      1. For an audiologist:
         a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be sixty-three (63) dollars per hour of service; or
         b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be eighty-nine (89) dollars per hour of service.
      2. For a family therapist:
         a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be sixty-three (63) dollars per hour of service; or
         b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be eighty-nine (89) dollars per hour of service.
      3. For a licensed psychologist or certified psychologist with autonomous functioning:
         a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be $139 per hour of service; or
         b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be $153 per hour of service.
      4. For a certified psychological assistant:
         a. In the office or center based site, the fee for a collateral service or a therapeutic intervention including co treatment shall be $104 per hour of service; or
         b. In the home or community site, the fee for a collateral service or a therapeutic intervention including co treatment shall be $153 per hour of service.
      5. For a developmental interventionist:
         a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be sixty-one (61) dollars per hour of service; or
         b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be eighty-nine (89) dollars per hour of service.
      6. For a developmental associate:
         a. In the office or center based site, the fee for a collateral service or a therapeutic intervention including co treatment shall be forty-five (45) dollars per hour of service; or
         b. In the home or community site, the fee for a collateral service or a therapeutic intervention including co treatment shall be eighty-nine (89) dollars per hour of service.
      7. For a registered nurse:
         a. In the office or center based site, the fee for a Service assessment, collateral service or a therapeutic intervention including co treatment shall be sixty-three (63) dollars per hour of service; or
         b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be eighty-nine (89) dollars per hour of service.
      8. For a licensed practical nurse:
         a. In the office or center based site, the fee for a collateral service or a therapeutic intervention including co treatment shall be twenty-four (24) dollars per hour of service; or
         b. In the home or community site, the fee for a collateral service or a therapeutic intervention including co treatment shall be thirty-two (32) dollars per hour of service.
      9. For a nutritionist:
         a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including co treatment shall be sixty-three (63) dollars per hour of service; or
b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

10. For a diagnosis specialist:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

11. For an occupational therapist:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

12. For an occupational therapist assistant:
   a. In the office or center based site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.

13. For an orientation and mobility specialist:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

14. For a physical therapist:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

15. For a physical therapist assistant:
   a. In the office or center based site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.

16. For a speech therapist:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

17. For a social worker:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

18. For a teacher of the deaf and hard of hearing:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

19. For a teacher of the visually impaired:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

20. For a physician providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician shall not receive reimbursement for therapeutic intervention.

21. For an assistive technology specialist:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

22. For a speech therapist assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-five (65) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

23. For a social worker assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.

24. For a speech therapist assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

25. For a social worker assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.

26. For a teacher of the deaf and hard of hearing:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service.

27. For a teacher of the visually impaired:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

28. For a speech therapist assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-five (65) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

29. For a social worker assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.

30. For a teacher of the deaf and hard of hearing:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service.

31. For a teacher of the visually impaired:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

32. For a speech therapist assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-five (65) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

33. For a social worker assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.

34. For a teacher of the deaf and hard of hearing:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-three (63) dollars per hour of service.

35. For a teacher of the visually impaired:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

36. For a speech therapist assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be sixty-five (65) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

37. For a social worker assistant:
   a. In the office or center based site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be forty-six (46) dollars per hour of service; or
   b. In the home or community site, the fee for a service assessment, collateral service or a therapeutic intervention including cotreatment shall be seventy (70) dollars per hour of service.
no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(3) For service assessment:
(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.
(b) Payment shall be limited to three (3) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.
(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.
(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent.

(4) For therapeutic intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitation for payment of services shall be as follows:
(a) For office, seminar or home and community sites:
1. Payment shall be limited to no more than one (1) hour per day per discipline by a:
   a. Professional meeting the qualifications established in 911 KAR 2:150; or
   b. Paraprofessional meeting the qualifications established in 911 KAR 2:150.
2. Payment shall be limited to no more than ninety-six (96) units for a single discipline and 144 units for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional 192 units during a six (6) month period.
(b) For group:
1. Children shall not be eligible for both group and individual therapy in the same developmental domain concurrently on the Individualized Family Services Plan(IFSP).
2. Group providers shall be preapproved by the Department for Public Health.
3. The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.
4. Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.
(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 911 KAR 2:130, Section 2(5) or (6).
(e) Payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

(5) For respite, payment shall:
(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;
(b) Not be allowed to accumulate beyond each month; and
(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(6) For collateral services, payment for:
(a) Length of an IFSP meeting shall be limited to four (4) billable units;
(b) Attendance at one (1) Admissions and Release Committee(ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and two (2) professionals or paraprofessionals selected by the IFSP team;
(c) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 911 KAR 2:120, Section 1(4)(e)(2). Payment shall be at the collateral services rate for the discipline that the evaluator represents, and (d) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided.

(7) For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(8) Unless prior authorized by the Department for Public Health due to a shortage of primary level evaluators, a primary level evaluator shall not be eligible to provide therapeutic intervention to a child whom he evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Requests for payment for therapeutic intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, prior to the service being delivered and shall include the following:
(a) A service exception request describing:
1. Current IFSP team members;
2. Current services;
3. Description of current development status;
4. Family input;
5. Additional services requested; and
6. Rationale for the additional services;
(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e)(1), which shall include the following:
   1. History;
   2. Physical exam;
   3. Hearing screening;
   4. Vision screening, and
   5. Other available reports from medical specialties;
   (c) Developmental evaluation report in accordance with 911 KAR 2:120, Section 1(4)(e)(2), which shall include the following:
      1. Primary level evaluation report; and
      2. Intensive level evaluation report, if applicable;
   (d) IFSP team member reports completed within the last twelve (12) months by the disciplines involved, including:
      1. Assessments; and
      2. Six (6) month progress reports;
   (e) IFSP documents from the last twelve (12) months, including amendments;
   (f) Payor of Last Resort Form, along with available supporting documentation, including:
      1. Requests submitted to other payors; and
      2. Responses from payor sources;
   (g) Transfer of Skills Form; and
   (h) Service Planning Activity Matrix Form.
(2) Requests for payment for service coordination services beyond the limits established in Section 3 of the administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, prior to the service being delivered and shall include:
(a) A service exception request as required by subsection (1)(a) of this section;
(b) A copy of the current IFSP; and
(c) A detailed description of how and when the additional units are to be used.
(3) If the IFSP team is not in agreement with the decision of the record review team:
(a) A request for further review shall be submitted to the Department for Public Health; and
(b) A three (3) person team from the Department for Public Health, Division of Material[Adult] and Child Health[improvement], including the division director, shall render a recommendation.
(4) If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:
(a) The child's IFSP team shall be asked to reconvene for an IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and
(b) If the IFSP team concludes at that IFSP meeting that the
services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for services based on a sliding fee scale, except that a charge shall not be made for the following functions:
(a) Child find;
(b) Evaluation and assessment;
(c) Service coordination; and
(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.
(2) Payment of fees shall be for the purpose of:
(a) Maximizing available sources of funding for early intervention services; and
(b) Giving families an opportunity to assist with the cost of services if [where] there is a means to do so, in a family share approach.
(3) The family share payment shall:
(a) Be explained to the family by the service coordinator;
(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time therapeutic services are authorized, and continuing for the duration of participation in early intervention services, as determined by the:
1. Level of family gross income identified on the last Federal Internal Revenue Service statement or check stubs from the four (4) most recent consecutive pay periods, as reported by the family.
2. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:
   a. Below 200 percent of poverty, there shall be no payment;
   b. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;
   c. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;
   d. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;
   e. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or
   f. From 600 percent of poverty and over, the payment shall be $100 per month of participation.
(c) Not apply to a child receiving Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefits; and
(d) Not apply to a family whose child receives only evaluation, assessment, service coordination services or IFSP development in the initial calendar month of eligibility. The initial service coordinator shall notify the Department for Public Health First Steps financial case manager immediately if the initial IFSP date is different than the month that therapeutic intervention services are started.
(e) Not apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps financial case manager in accordance with paragraph (g)(1) and (2) of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs such as an unexpected hospitalization;
(f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development if the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the Department for Public Health financial case manager immediately if this situation exists so that the family is not assessed a family share cost;
(g) Not prevent a child from receiving services if the family shows to the satisfaction of the Department for Public Health an inability to pay for services with the following:
1. The service coordinator shall submit to the Department for Public Health First Steps financial case manager, on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and
2. The family shall undergo a financial review by the Department for Public Health that may:
   a. Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities; and
   b. Result in a calculation of a new family-share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b) of this subsection. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or
   c. Suspend or reduce the family-share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly; and
(h) [Except for a family that refuses to apply for Medicaid in accordance with subsection (6) of this section.] Not apply to a family who chooses to use their private insurance if the amount of the insurance monies received and applied to the family's services in the calendar year is equal to or greater than the sum of the obligated amount of family share during the same calendar year. Refunding of family share collected up to the amount of the private insurance reimbursement shall occur after the end of a calendar year.
(4) Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income shall result in a change in the amount of the obligated family share payment. If a change in the family share category occurs, it shall become effective the month following the month the change was reported.
(5) A family that refuses to have its income verified shall be assessed a family share payment of $100 per month of participation.

(6)[Unless there is a religious reason for not applying for Medicaid or KCHIP, a family that is potentially eligible for and refuses to apply for Medicaid or KCHIP shall be assessed a family-share payment of $100 per month of participation. A review of a child's potential Medicaid eligibility shall occur every six (6) months. If the child is potentially eligible for Medicaid, within sixty (60) days of being advised to apply, the family shall provide the service coordinator with notification of the disposition of the inquiry into Medicaid eligibility.
(7) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.
(8)(f)] If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.
(9)[(f)] A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.
(10)[(f)] First Steps shall assume payment of First Steps-related coinsurance and deductibles.

(11) With the exception of a discipline identified in KAR 2130, Section 2(9)(g)(5), k, or l, a provider shall bill a third-party insurance carrier or, if any, for any therapeutic intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted with the First Steps bill.

Section 6. Incorporation by Reference. (1)[The following material is incorporated by reference [91-9 Technology-assisted Observation and Training Support form (TOTS) , November 2008 edition, is incorporated by reference.] (payor: 2003 Form, October 2004;)
(b) [Transfer of Skills Form, October 2004;]
(c) [Service Planning Activity Matrix Form, October 2004;]
(d) [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health;]
ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Commentary and After Comments)

401 KAR 5:002. Definitions for 401 KAR Chapter 5.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the [Environment and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. EO 2008-507 and 2008-531, effective June 16, 2008, abolishes the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. The administrative regulation and 401 KAR 6-026, 401 KAR 5-002, 401 KAR 5-005, and 401 KAR 6-031 establish procedures to protect the surface waters of the Commonwealth and the protect water resources. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms [and acronyms, abbreviations, and symbols] used in KRS 401 KAR Chapter 5. These definitions are not related to the discharge of wastes. If applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 C.F.R. Parts 122, 123, 401-471, and the planning requirements in 40 C.F.R. Part 130. There are no definitions that are more stringent than the federal counterparts [federal requirements].

Section 1. Definitions. (1) ["""" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq."]

(2) "Activity" means, in 401 KAR 5-050 through 401 KAR 5-080, for purposes of 401 KAR 5-050 to 401 KAR 5-080 and if used in conjunction with "facility" [facility], [any] KPDES point source, or [any] other activity, including land or related appurtenances [thereof], that is subject to regulation under the KPDES program.

(2) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC50, an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute toxicity" means the highest in-stream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.

(2) "Acute toxicity" means lethality or other harmful effect sustained by an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of sixty-six (66) hours or less, to a specific toxic substance or mixture of toxic substances.

(2) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC50, by the end of the acute-exposure period.

(2) "Administrator" is defined by 40 C.F.R. 122.2, effective July 1, 2008 (means the administrator of the United States Environmental Protection Agency or the administrator's authorized representative).

(2) "Adversely affects" or "adversely changes" means, for purposes of 401 KAR 5-026 through 401 KAR 5-031, to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution-tolerant aquatic species so that aquatic life support or aquatic habit is impaired.

(2) "Agricultural wastes handling system" means a [discharge] structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application.

(2) "Alternative effluent limitations" is defined by 40 C.F.R. 122.571(a), effective July 1, 2008 [means all effluent limitations and standards for the control of the thermal component of [an] [discharge that is] which are [established under 401 KAR 6-056].

(2) "Animal feeding operation" or "AFO" means, for purposes of 401 KAR 5-050 and 401 KAR 5-060 to 401 KAR 5-080, a farm or facility, other than an aquatic animal production facility, that meets one (1) of the following descriptions (other than an aquatic animal production facility, where the following conditions are met):

(1) "Large animal feeding operation" as defined in subsection (2) of this section; and

(2) "Medium animal feeding operation" as defined in subsection (3) of this section; and

(3) "Where:
Nw = number of cattle;
Nc = number of horses;
Nv = number of swine weighing over twenty-five (25) kg;
Ne = number of sheep;
Np = number of poultry;
Nf = number of fish;
Nx = number of other animals;
Nf = number of farm animals;
Nj = number of livestock;
K = number of animal feeding units;
N = number of animal feeding units;"
the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(10) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (2) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last collection days.

(20) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and accredits authorities in establishing new certification programs and upgrading existing programs.

(21) "Available" means located within the planning area and:

(a) Located within one and zero-tents (1.0) mile of a regional facility for a WWTP (Wastewater Treatment Plant) with an average daily design capacity larger than 1,000 gpd [The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow]; or

(b) For new construction if the distance is one and zero-tents (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(21) "Average monthly discharge limitation" means the highest allowable average of daily discharges measured during a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(21) "Average weekly discharge limitation" means the highest allowable average of daily discharges measured during a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(21) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through self-regulated changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance with all sources 401-KAR 5-066 and may not include species whose presence or abundance is attributable to allochthonous limitations imposed pursuant to 401-KAR 5-066.

(25) "Barrel" means forty-two (42) U.S. gallons.

(25) "BMP" means best management practice or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100(3) or

(b) For all other purposes:

1. for purposes other than agriculture operations,] Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2 [BMPs—also include] Treatment requirements, operating procedures, practices to control silt run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(25) "Biological oxygen demand," "BOD," or "BODs," is defined by 40 C.F.R. 133.101(d), effective July 1, 2008 means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(14) "BMP" means best management practices.

(31) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(33) "BOD" or "BODs" means biochemical oxygen demand.

(33) "BPT" means best practicable technology currently available.

(33) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys it discharge to the building sewer which begins two (2) feet outside the building wall.

(33) "Building sewer" means that part of the drainage system that extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(33) "Bypass" means the intentional diversion of sewage or waste streams from a portion of a facility or industrial user's treatment facility.

(33) "C" means degrees Celsius.

(33) "CAH" means cold water aquatic habitat.

(33) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(33) "Cation-exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.

(33) "CBOD" means carbonaceous biochemical oxygen demand.

(33) "CFC" means carbon tetrachloride.

(33) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, at 42 U.S.C. 9601 et seq.

(33) "Certificate" means the certificate of competency issued by the secretary or the secretary's designee stating that the operator has met the requirements for the specified operator classification as set by 401-KAR 8-010.

(33) "Certified operator" means an individual who holds an active certified operator's certificate issued in accordance with 401-KAR 11-050(a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401-KAR 8-010.

(33) "CFM" means cubic feet per minute.


(33) "Chronic criteria" means the highest inhalation concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable health effects.

(33) "Chronic toxicity" means lethality, reduced growth or reproduction or other hazard effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, due to toxic substances or mixtures of toxic substances.

(33) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(33) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. Sections 1251 et seq), otherwise known as the Federal Water Pollution Control Act.

(33) "Coal mining operation" means a surface coal mining operation which begins after July 1, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 1, 1990, which receives a permit revision from the Department for Surface Mining, Reclamation and Enforcement (DSMRE) in accordance with 401-KAR 6-010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.

(33) "COD" means chemical oxygen demand.

(33) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrates that support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(33) "Combined sewer" or "combined sewer line" means a
screw or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(22)[66] "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(23)[67] -Composite sample- means:
(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;
(b) Not less than four (4) combined equal-volume-effluent-portions collected over a period of eight (8) hours at intervals proportional to flow;
(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow, or
(d) An effluent portion consisting of a minimum of four (4) combined equal-volumegrab samples taken approximately two (2) hours apart.

(68) "Concentrated animal feeding operation" or "CAFO" means one of the following, for purposes of 401 KAR 5-006 and 401 KAR 5-060 to 401 KAR 5-069, an animal feeding operation where:
(a) "Large concentrated animal feeding operation" as defined in subsection (72) of this section;
(b) "Medium concentrated animal feeding operation" as defined in subsection (84) of this section; or
(c) "Small concentrated animal feeding operation" as defined in subsection (156) of this section.

(24) More than the following numbers of indicated animals are confined:
1. 1,000 cattle and feeder cattle;
2. 700 mature dairy cattle, whether milked or dry cows;
3. 2,000 swine each weighing over twenty-five (25) kilograms (approximately fifty-five [55] pounds); 4. 500 horses;
5. 10,000 sheep or lambs;
6. 60,000 turkeys.
7. 100,000 laying hens or broilers if the facility has continuous overflow-watering;
8. 50,000 laying hens or broilers if the facility has a liquid manure system;
9. 5,000 ducks;
or
10. 1,000 animal units; or
(b) More than the following number and types of animals are confined:
(a) 1,000 cattle and feeder cattle;
b) 200 mature dairy cattle, whether milked or dry cows;
c) 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five [55] pounds);
d) 160 horses;
e) 3,000 sheep or lambs;
f) 16,000 turkeys;
g) 50,000 laying hens or broilers if the facility has continuous overflow-watering;
h) 2,000 laying hens or broilers if the facility has a liquid manure system;
i) 1,000 ducks;
j) 300 animal units; and
(2) Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device, or pollutants are discharged directly into waters of the commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentration and feeding operation.

(69) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5-060 or which the cabinet designates under 401 KAR 5-060.

(60) "Consolidation sewer" means a conduit, without direct sanitary connections that which intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(25)[61] "Continuous facility discharge" means a discharge that which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(26)[62] -Control authority- means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(63) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(64) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlornio (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, E. coli, or faecal phosphorus.

(27)[65] -Copermittee- means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(66) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents that which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(28)[67] "CSO" means combined sewer overflow.

(66) "CWA means" means the Clean Water Act as amended.

(69) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the twenty-four (24) hour period. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(70) "Date of program approval" means September 30, 1983, the effective date of the administrator’s approval of Kentucky’s KPDES regulatory program pursuant to [under CWA Section 403] 33 U.S.C. Section 1342.

(29)[74] "Day" means a twenty-four (24) hour period.

(30) "Design flow" means the long-term daily average flow the wastewater treatment plant can treat and remain in compliance with the overall performance requirements during its design life.

(31)[72] -Designated project area- means the portions of the waters of the commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or process of cultivation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(79) "Direct discharge" means the discharge of a pollutant into waters of the commonwealth if the discharge is not included under the definition of indirect discharge and/or does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the commonwealth.

(32)[74] "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swales in the stream bed.

(33)[76] "Discharge" or "discharge of a pollutant" means the [any] addition of any pollutant or combination of pollutants to waters of the commonwealth from any point source.

(34) This definition includes, but is not limited to, additions of pollutants into waters of the commonwealth from surface runoff which is collected or channeled by human effort, discharges through pipes, sewers, or other conveyances whether publicly or privately owned which do not lead to a treatment works, and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(75) "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(35)[77] "Disposal well" means a borehole drilled or proposed...
"Excessive infiltration" means a high groundwater period induced peak infiltration rate that:

(a) [which] Results in an operational problem[problems] and permit violation[violations] at the WWTP or results in recurring overflows from the sewer system or the WWTP and

(b) [it] Does not include

1. An overflow that results[overflow which results] from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly; or

2. A resulting overflow if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

"Excessive inflow" means a rainfall induced peak inflow rate that:

(a) [which] Results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b) [for combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.]

"Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

"Flow" means degrees Fahrenheit.

"Facility" means:

(a) [For purposes of 401 KAR 5-005 or 401 KAR 5-006, a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5.090, or

(b) [For purposes of 401 KAR 5-050 through[to] 401 KAR 5-090 and if used in conjunction with, any KPDES point source or any other facility, including land use, water use, and related appurtenances [therein], that is subject to regulation under the KPDES program, or

(c) For purposes of 401 KAR 5-000, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for storing, or disposing of produced water.

"Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies; and the equipment which is subject to manual control of the source.

"Facial coliform" means the portion of the coliform group of bacteria [which] are present in the intestinal tract or the feces of warm-blooded animals. It [generally] includes organisms that [which] are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

"Filter strip" means a strip of area of vegetation for removing sediment, organic material, and other pollutants from runoff and wastewater.

"Flooding relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage [when] a
sulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.

[134] "Industrial wastewater treatment plant" or "IWTP" means a privately owned IWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

[135] [136] "Infiltration" is defined by 40 C.F.R. 35.905, effective July 1, 2008 [means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes].

[135] [136] "Inflow" is defined by 40 C.F.R. 35.905, effective July 1, 2008 [means water other than wastewater that enters a sewer system from manholes such as roof leaders, yard drains, area drains, sewers from sewers or sanitary areas, openings in manhole covers, cross connections with storm sewers, catch basins, seeping towers, storm water, source runoff, street wash waters, drainage, or any other source that [which] directs rainwater into the sewer system].

[137] [138] "Inhibition-concentration-of-twenty-five [25]-percent" or "IC[25]" means the concentration-determined by a linear interpolation method for estimating the concentration at which a twenty-five (25)-percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration-at-which-no-acceptable-chronic-effect-is-observed. [138] "Injection" means a type of land application in which the waste is placed directly beneath the land surface.

[139] [140] "Involvement" means a sustained impact by a document developed by the cabinet annually or biannually, as necessary, which contains a project priority list that prioritizes the cabinet's projects qualifying for federally-assisted wastewater-revolving-fund-monies pursuant to KRS Chapter 224-A.

[140] "Interference" is defined by 40 C.F.R. 403.3(k), effective July 1, 2008 [means a discharge which, alone or in conjunction with discharges from other sources; (a) Inhibits or disrupts the POTW, its treatment processes or operators, or its sludge processes, use, or disposal; and (b) Is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations, or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regualtions contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA; as amended, the Clean Air Act, as amended, and the Toxic Substances Control Act as amended.]

[141] "Intermediate facility" means an intermediate [a] WWTP [with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD)] or g sewer lines [of] 2,500 feet to 5,000 feet in length including appurtenances.

[142] [143] "Intermediate nonpublicly-owned treatment works" means a facility with which has a design flow rate of 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and that [which] is not a POTW.

[143] [144] "Intermediate WWTP" means a [g] a WWTP with an average daily design capacity of 10,000 to 49,999 gpd.

[145] [146] "Intermittent water" means a stream that flows only at certain times of the year.

[146] [147] " Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator pursuant to 33 U.S.C. 1251 - 1387 (under the CWA) or KRS Chapter 224.

[147] [148] "Industrial WWTP" means an industrial WWTP.

[148] [149] "KAR" means Kentucky Administrative Regulations.

[149] [150] "Kunst" means the type of geologic terrain underlying by carbonate rocks where significant solution of rock has occurred.

- 341 -
due to flowing groundwater.

(64)(146) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole drain, karst window, swallow, spring, sinking stream, or cave.

(460) "Kentucky Integrated Municipal Operational Permit" or "KIMP" means a permit issued pursuant to 401 KAR 5:005 for operating a [publicly-owned] sewer system which has more than 5,000 linear feet of sewer line that discharges to a sewer system, or a WWTP that is owned by another person.

(55)(146) "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a [publicly-owned] sewer system which does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(60) "KEMP" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(77) "KEMP" means the Kentucky Pollution Discharge Elimination System.

(66) "KDPE" means the Kentucky Pollution Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(60) "KRS" means Kentucky Revised Statutes.

(67) "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(80) "Land application area" is defined by 40 C.F.R. 122.23(b)(3), effective July 1, 2008.

(71) "Large animal feeding operation" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(a) 100 mature dairy cows, whether milked or dry;
(b) 1,000 veal calves;
(c) 2,500 cattle other than mature dairy cows or veal calves;
(d) 500 sows each weighing fifty-five (55) pounds or more;
(e) 1,000 sows each weighing less than fifty-five (55) pounds; sugar to molasses;
(f) 100 horses;
(g) 10,000 sheep or lambs;
(h) 50,000 turkeys;
(i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
(j) 125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system;
(k) 30,000 ducks, if the AFO uses a liquid manure handling system or
(l) 5,000 ducks, if the AFO uses a liquid manure handling system.

(72) "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(4), effective July 1, 2008.

(73) "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or a sewer line of more than 5,000 feet in length including appurtenances.

(74) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1980 Decennial Census or the Census of Governments; or
(b) Owned or operated by a municipality other than the described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer systems due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;
2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;
3. The quantity and nature of pollutants discharged to waters of the commonwealth;
4. The nature of the receiving waters; and
5. Other relevant factors.

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer separable municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on jurisdictional, watershed, or other appropriate basis that include one or more of the systems described in paragraph (a) or (b) of this subsection.

(460) "Large nonpublicly-owned treatment works" means a facility that has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and that is not a POTW.

(75) "Large WWTP" means a WWTP with an average daily design capacity of 50,000 GPD or more.

(76) "Large WWTP" means a WWTP which serves a permanent coal processing facility that processes more than 600 tons per hour of raw coal.

(165) "LC50" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(166) "LC50" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to sixty-five (65)-percent of the species tested in a toxicity test during a specified exposure period.

(167) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 401 KAR 5:060, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intermittently on the logs.

(168) "Long-term CSO control plan" means a control plan that complies with the [[Combined Sewer Overflow Control Policy]] issued by the USEPA in the "Federal Register" on April 19, 1994 (59 FR 16888), incorporated by reference in Section 3 of this administrative regulation.

(77) "Manure" is defined by 40 C.F.R. 122.23(b)(5), effective July 1, 2008.

(147) "Maintain" means, for purposes of 401 KAR 5:050 through 401 KAR 5:061, to preserve or keep in present condition by not allowing an adverse permanent or long term change to water quality or to a population of an aquatic organism or its habitat.

(148) "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capactiy;
(b) A section of sewer or force main with the same size, alignment, and slope;
(c) The term does not include replacement of an entire WWTP with a new WWTP.

(72)(148) "Major facility" means any KDPE facility or activity classified as a KDPE facility by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(92)(147) "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including resource recovery, manufacturing, product distribution, or [and] wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criterion for classification as a major facility.

(91)(147) "Major municipal separate storm sewer outfall" or
"major outfall" is defined by 40 C.F.R. 122.26(b)(5), effective July 1, 2008.

(82) means:
(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more, or its equivalent, of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or
(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twenty (12) inches or more ex-ante-equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(127) "Major outfall" means a major municipal separate storm sewer outfall.

(128) "Mammade" means constructed by humans.

(129) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or subgroup of industrial users identified by the POTW, may discharge pursuant to limits developed under 401 KAR 5, 005, Section 3(3).

(130) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(131) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(52) "Medium animal feeding operation means an AFO that contains the type and number of animals within any of the following ranges:
(a) 200 to 699 dairy cows, whether milked or dry;
(b) 300 to 999 veal calves;
(c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, or cow or calf pairs;
(d) 750 to 2,499 swine each weighing fifty-five (55) pounds or more;
(e) 3,000 to 9,992 swine each weighing less than fifty-five (55) pounds;
(f) 150 to 499 horses;
(g) 3,000 to 9,992 sheep or lambs;
(h) 15,500 to 64,999 turkeys;
(i) 8,000 to 29,999 laying hens or roosters. If the AFO uses a liquid manure handling system the laying hens or roosters cannot be counted as livestock;
(j) 37,500 to 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;
(k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
(l) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;
(m) 1,500 to 4,999 ducks if the AFO uses a liquid manure handling system.

(53) "Medium concentrated animal feeding operation is defined by 40 C.F.R. 122.23(b)(5), effective July 1, 2008.

(54) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:
(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:
1. Physical interconnections between the municipal separate storm sewers;
2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;
3. The quantity and nature of pollutants discharged to waters of the commonwealth;
4. The nature of the receiving waters; and
5. Other relevant factors.

(e) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(178) "Metalimnion" means the region of the thermocline.

(179) "μg/l" means micrograms per liter, same as ppb, assuming unit density.

(180) [181] "mgd" or "MGD" means million gallons per day.

(182) "mg/l" or "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(183) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution,[;] and is equivalent to parts per million in water, assuming unit density.

(184) "Minimum--design--volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.

(185) "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities and including, but not limited to, resource recovery, manufacturing, products distribution, and wholesales and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants.

(186) [187] "a facility--designated--process--related--wastewater--does--not--qualify--under--this--definition--then--the--facility--shall--be--considered--to--be--a--minor--industry.

(188) "Minor modification to a WWTP" means, for purposes of construction approvals required by 401 KAR 5, 005, a modification that (when) does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(189) [190] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(191) [192] "MS4" means a municipal separate storm sewer system.

(193) "Municipal separate storm sewer system" or "MS4" is defined by 40 C.F.R. 122.26(b)(6), effective July 1, 2008.

(194) [195] means all separate storm sewers that are defined as large or medium or small municipal separate storm sewer systems pursuant to subsections 160, 161, and 166 of this chapter. The separate storm sewers are designated as "MS4" in Section 501(1)(4) of this chapter, consisting of a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curb, gutters, ditches, manmade channels, or storm drains:
(a) Owned or operated by a state, city, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA, 33 U.S.C. 128, that discharges to waters of the commonwealth;
(b) Designed or used for collecting or conveying storm water;
(c) Which is not a combined sewer; and
(d) Which is not a part of a POTW.

(196) [197] "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency pursuant to subsections 208 of the CWA, 33 U.S.C. 128.

(198) [199] "National Pollutant Discharge Elimination System" or "NPDES" is defined by 40 C.F.R. 122.2, effective July 1, 2008, means the national program for issuing, modifying, revoking and reissuing, terminating, modifying and enforcing permits, and imposing and enforcing pretreatment requirements.

(200) [201] "National pretreatment standard", "pretreatment standard", or "standard" is defined by 40 C.F.R. 403.3(1), effective...
VOLUME 36, NUMBER 2 — AUGUST 1, 2009

five July 1, 2003 (means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with 33 U.S.C. 1311(b) and (e) that((Sec. 307(b) and (e) of the Act, which) applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401-KAR 6-067.)

(92)(192)(202) "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 U.S.C. 6922 in the U.S. [United States] Department of Agriculture.

(203) The NRCS was formerly called the Soil Conservation Service.

(204) "Natural-temperature" means, for purposes of 401-KAR 6-026 through 401-KAR 6-031, the temperature that would exist in waters of the commonwealth without the change of enchylostomos of aquatic origin, not contaminated with that caused by climatic change or naturally-occurring variable-temperature associated with riparian vegetation and seasonal changes.

(205) "Natural-water-quality" means, for purposes of 401-KAR 6-026 through 401-KAR 6-031, those naturally occurring physical, chemical, and biological properties of waters.

(206) "New discharge" means, for purposes of 401-KAR 6-026 through 401-KAR 6-031, the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(207) "New discharge" means, as used in 401-KAR 5-060 through 401-KAR 6-050 to 401-KAR 5-080, of any building, structure, facility, or installation.

(a) From which there is or may be a discharge of pollutants; and

(b) That will commence the discharge of pollutants at a particular site prior to August 13, 1979.

(208) That(Which) has never received a finally effective NPDES or KPDES permit for discharges at that site; and

(209) That(Which) is not a new source.

(b) This definition includes an indirect discharger that which conveys discharges into the waters of the commonwealth after August 13, 1979. It also includes any existing mobile point source at which begins discharging at a site where it has not been or will not receive or be a wastewater treatment system at that time.

(210) "New source" means as used in 401-KAR 6-050 through 401-KAR 6-067.-(a) For purposes of 401-KAR 6-050 to 401-KAR 5-080, of any building, structure, facility, or installation from which there is or may be a (direct or indirect) discharge of pollutants, the construction of which commenced:

(a)(1) After promulgation of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that for pretreatment standards which are applicable to the source; or

(b)(2) After publication of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that for pretreatment standards which are applicable to the source, but only if the applicable federal standards are promulgated within 120 days of publication.

(211) Their proposing or any.

(b) For purposes of 401-KAR 6-057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

(a) The building, structure, facility, or installation is constructed at a site at which no other source is located;

(b) The building, structure, facility, or installation is or which is substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

(c) The production or wastewater-generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction of a new source has commenced if the owner or operator has:

(a) Begun, or caused to begin, as part of a continuous or on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment;

(b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(212) (213) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including a priority pollutant as defined in 401-KAR 5-060.

(214) "Nonpoint" means any source of pollutants not defined by a point source.

(215) "NRCS" as used in this chapter.

(216) "Nonpoint-source industry" means an industry that generates and discharges only nonpoint wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharge nonpoint wastewater, for example, noncontact cooling- or stockpile-run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-eighth (98) percentile concentration for fifty (50) percent mortality (96 LC₅₀) for a representative indigenous aquatic organism. If any of the above conditions is not met, the discharge is considered to be from a minor industry.

(217) "NPDES" is defined in KRS 224.01-010.

(218) "NRCS" means the Natural Resources Conservation Service.

(219) "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture.

(220) "Oil" means, for purposes of 401-KAR 6-000, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(221) "OM&M" means operation and maintenance.

(222) "Operator" means, for purposes of 401-KAR 6-000, any activity, construction, operation, or maintenance of any facility.

(223) "Operator" means a person involved in the operation of a facility or activity.

(224) "Outfall" means, for purposes of 401-KAR 6-000, any activity, construction, operation, or maintenance of any facility.

(225) "Outfall" means any person involved in the operation of a facility or activity.

(226) For purposes of 401-KAR 6-010, any person involved in the operation of a wastewater system.

(227) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that(Which) may contribute to the pollution of any waters of the commonwealth.

(228) "Outfall" means, for municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances that(Which) connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(229) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding-
ing national resource-water pursuant to 401 KAR 5-020.

(211) "Outstanding state resource-water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10-031(5-031).

(104)(105)(143) "Overburden" means [any] material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(105)(149)(146) "Overflow" means any intentional or unintentional diversion of flow from a facility.

(106)(112)(2) Any intentional or unintentional diversion of flow from a facility.

(b) For purposes of 401 KAR 5-067, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(214) "Owner" means [any] person who has legal ownership of a [financial] business entity [interest in] [the right to develop, operate, or produce oil or gas, or (b) Any facility or activity regulated pursuant to 401 KAR Chapter 5.

(107)(108)(146) "Package WWTP" means a factory-built WWTP that is transported to and assembled or set in place at the site.

(108)(129)(216) "Pass-through" means: a discharge which exits the POTW into waters of the commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's POTW permit, including an increase in the magnitude or duration of violation.

(171) "PCRA" means primary contact recreation.

(171) "PCRA" means primary contact recreation.

(171)(172)(216) "Permit" means:

(a) As used in [for purposes of] 401 KAR 5-005 or 401 KAR 5-006, a document issued by the cabinet that authorizes the permittee to construct, modify, or operate a facility;

(b) As used in [for purposes of] 401 KAR 5-050 through 401 KAR 5-080, a KDPS permit.

(199)(141)(200) "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5-006, Section 4:

(a) Planning area maps;

(b) A discussion of the need for sewer service in the area;

(c) Population projections; and

(d) An estimate of the twenty (20) year cost by category.

(110)(111)(212) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(110)(129)(222) "Point source" is defined by 33 U.S.C. 1362(14) means any discharge, continuous or discrete, into waters of the commonwealth, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, septic system, container, or storage vessel, or other unlimited discharge from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(112)(149)(222) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(113)(114)(224) "POTW treatment plant" is defined by 40 C.F.R. 403.3(c), effective July 1, 2008 [means that portion of the POTW that is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste].

(114)(115)(226) "ppm" means parts-per-mil, assuming unit density, same as mg/l.

(226) "ppm" means parts per million, assuming unit density, same as mg/l.

(227) "Procedural discharge" means any discharge that is occurring when applying for a KDPS permit under 401 KAR 5-029 or 401 KAR 5-040.

(228) "Pretreatment" is defined by 40 C.F.R. 403.3(a), effective July 1, 2008.

(228) "Pretreatment" is defined by 40 C.F.R. 403.3(a), effective July 1, 2008.

(115)(116) "Means the reduction of the amount of pollutants, the concentration of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by: biological, chemical, or physical processes, processes charge or by other means, except as prohibited by 401 KAR 5-067. Appropriate pretreatment technology includes equipment such as equalization tanks or facilities, for pollution against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or waste water from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5-067.

(229) "Pretreatment requirement" is defined by 40 C.F.R. 403.3(c), effective July 1, 2008 defines a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.


(117)(118)(231) "Primary contact recreation water" means waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(232) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5-062.

(233) "Primary responsibility" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11 having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the commonwealth, or to supervise others in conducting these practices.

(118)(119)(234) "Privately-owned treatment works" is defined by 40 C.F.R. 122.2, effective July 1, 2008.

(119)(120)(235) "Production area" means, for animal feeding operations, the area defined by 40 C.F.R. 122.2(b)(6), effective July 1, 2008.

(120)(121)(236) "POTW" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(236) "Production area" means any area which, while manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(236) "Production area" means area which, while manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(237) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(238) "Professional engineer" or "engineer" is defined by KRS 322.0102.

(121)(122)(239) "Private priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A that includes a priority ranking of applicants for the construction of wastewater treatment works under 33 U.S.C. 1342(c)(3)(H).

(122)(123)(240) "Propagated" means the continuity of a species by successful spawning, hatching, and development of natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(241) "Proposed permit" means a KDPS permit prepared after the close of the public comment period and, if applicable, any public hearing and administrative appeals that are sent to U.S. EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(123)(124)(242) "Public water system" is defined by 40 C.F.R. 141.2, effective July 1, 2008.

(124)(125)(243) "Preliminary treatment" shall mean the meanings given in 401 KAR 5-040.

(125)(126)(244) "RCRA" means the Resource Conservation Recovery Act as amended, [42 U.S.C. 9601 - 9622(etc.)seq.]

(125)(122)(244) "Recalibration area" means the area of a cool mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(246) "Recommencing discharger" means a source that recommences discharge after terminating operations.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(126) "Recurring discharge" means, as it relates to a sewer system overflow, a discharge that occurs two (2) or more times in a twelve (12) month period.

(127) "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(128) "Regional facility" means a facility that is:

(a) Owned by a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220; and

(b) Designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area.

(129) "This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(129) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of area-wide treatment plant management planning prepared by the designated regional planning agency pursuant to 33 U.S.C. 1251 - 1267 (Sections 201-208, and 208 of the CWA) to control point sources of pollution within a planning area.

(130) "Regional pooling service" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 U.S.C. 1288 [of the CWA] and 40 C.F.R. Part 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area; and/or those existing agencies that have developed plans pursuant to 33 U.S.C. 1251, 1255, 1258, and 1311 (a) that provide planning related to wastewater collection, transportation, or treatment for a particular area or sections 201, 206, 208, and 303 (c) of the CWA shall be considered the regional planning agency for the area.

(131) "Regional sewage collection system" means a sewage collection system designated by a regional planning agency that is served by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(132) "Register" means to file forms with the division which contain information as to oil and gas well geographical location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information determined to be necessary by the division.

(252) "Remedial area" means only that area of any coal mining operation on which a coal mining operation was conducted before August 3, 1977.

(253) "Removal" means, for purposes of 401 KAR 5-057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW, and/or reduction of alteration as may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(254) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(255) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(256) "Requestor" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(257) "Residual solids" means the accumulated solid waste in the lower portion of a lagoon that contains greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(258) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and scrap.

(259) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(130) "SARA" means the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9501 - 9579 (as amended).

(131) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and 401 KAR Chapters 4 through 11 (administrative regulations promulgated pursuant thereto).


(133) "Secondary contact" or "SCR" means secondary contact recreation.

(134) "Secondary contact recreation water" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(135) "Secondary industry category" means any industry category which is not a primary industry category.

(136) "Secondary treatment" means that degree of treatment that results in an effluent quality that meets the minimum requirements of 401 KAR 5-045.

(137) "Service area" means that geographic area currently being served by a regional facility.

(138) "Seven-Q-ten" or "7Qt" means that minimum average flow that which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(139) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Sever property damage shall not mean economic loss caused by delays in production.

(140) "Sewage" means the water-carried human or animal waste from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(141) "Sewage sludge" is defined by 40 C.F.R. 122.2, effective July 1, 2008 [means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means wastewaters—both domestic and industrial—from human, households, commercial establishments, industries, and stormwater run-off,]] that are discharged to or otherwise enter a wastewater treatment plant.

(142) "Sewer line" means a device[those devices] used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer that which serves an individual building. A sewer line begins at the junction of two (2) building sewers that which serves different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(143) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(144) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(145) "SIC" means standard industrial classification.

(146) "Significant industrial user" or "SIU" is defined by 40 C.F.R. 403 .34, effective July 1, 2008.

(147) "Significant industrial user" means—(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 C.F.R. Chapter I, Subchapter N (Parts 401 through 474); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater,

b. Contributes a process wastewater which makes up five (5) percent or more of the average dry-weather hydraulic or organic capacity of the POTW treatment plant,

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement,

(148) "Significant industrial user" means—(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own
is not a POTW.

(153) [267] "Small WWTP means--[a] a WWTP with an average daily design capacity of less than 10,000 gpd,

(159) or

(159) [267]"coal-water-washing facilities, a WWTP which serves a portable coal-processing facility.

(286) "Source" means [any] building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(155) [286] "SPCC" means spill-prevention control-and-cou-ntermeasure.

(290) "Standard" means:

(a) For purposes of 401 KAR 5-006, 401 KAR 5-029, 401 KAR 5-060, and 401 KAR 5-031, a water quality standard.

(b) For purposes of 401 KAR 5-067, a pretreatment standard.

(291) "Storm water" is defined by 40 C.F.R. 122.26(b)(13), effective July 1, 2008 [means storm water run-off, snow melt run-off, and surface run-off and drainage].

(159) [292] "Storm water discharge associated with industrial activity" is defined by 40 C.F.R. 122.26(b)(14), effective July 1, 2008.

(157) "Storm water discharge" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 401 KAR 5-065. For the cateogories of industries identified in this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by cars of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse areas; and areas where industrial activity has taken place in the past and significant materials are still exposed to storm water. For the purposes of this definition, material-handling activities include storage, loading, and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm-water-drained from the above described areas. Industrial facilities include industrial facilities that are partially owned or controlled by the federal government, state government, or any municipality, or any facility that is owned or operated that meets the description of an industrial facility, except through (k) of the subsection, include those facilities designated under the provisions of 401 KAR 5-060, Section 12(1)(e). The following categories of facilities are considered to be engaging in industrial activity for purposes of this definition:

(e) Facilities subject to storm-water-effluent limitations-, guidelines, new-source performance standards, or toxics pollutant effluent standards under 401 KAR 5-065, Section 4, except facilities with toxics pollutant effluent standards which are exempted under paragraph (k) of the subsection.

(f) Facilities classified as Standard Industrial Classifications-24 except 234; 26 except 255 and 256, 26 except 283; 29; 31; 32 except 233, 33, 3441, and 379.

(c) Facilities classified as Standard Industrial Classifications-10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMRCA authority has been released, or except for areas of reopen mining operations which have been released from applicable state or federal reclaimaion requirements after December 17, 1990, and oil and gas exploration, production, processing, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, or byproducts of the extraction or transformation of crude oil or natural gas.

(d) Hazardous waste treatment, storage, or disposal facilities,

(286) Small municipally- or community-owned stormwater systems means any stormwater systems owned by any municipality, including school, hospital, or prison complexes, and highways or other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
including those that are operating under interim status or a permit under Subtitle C of RCRA; (e) Landfills, land-application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under the subsection, including those that are subject to regulation under Subtitle D of RCRA; (f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5016 and 5033; (g) Steam-electric-power-generating facilities, including coal handling sites; (h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operators, or airport deicing operations. Only those portions of the facility that are other involved in vehicle maintenance, including vehicle rehabs, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operators, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of the subsection are associated with industrial activity; (i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge and located within the confines of the facility, with a design flow of one and zero tenths (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 6.057. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA, 33 U.S.C. 1344; (j) Construction activity including cleaning, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area. Construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sales if the larger common plan will ultimately disturb five (5) acres or more; (k) Facilities under Standard Industrial Classifications 21, 22, 23, 23, 2414, 25, 26, 28, 29, 30, 31 except 311, 323, 34 except 3441, 36, 37 except 373, 38, 39, and 4221-25. (259) "Storm water discharge associated with small construction activity" is defined by 40 C.F.R. 122.25(b)(15), effective July 1, 2006, except that: (a) Waters within the "United States" means waters of the Commonwealth of Kentucky; and (b) Director means cabinet if "director" refers to the director of an approved state program; (158) means the discharge of storm water from: (a) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sales if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The cabinet may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five (5) acres where: 1. The value of the rainfall erosivity factor (R R in the Riedow Universal Soil Loss Equation) is less than five (5) during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 723, Poultry and Swine -Soil-Erosion by-Water: A Guide to Conservation Planning - With the Riedow Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997 - incorporated by reference in Section 3 of this administrative regulation. The Director of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a)(2) and 1 C.F.R. part 61. Copies may be obtained from EPA's Water Resources Center, Mail Code RC4100, 401-M ST. SW., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street SW., Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W., Suite 700, Washington, DC. An operator shall certify to the cabinet that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five (5). or 2. Storm-water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that those allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions, from all sources, and a margin of safety. For the purpose of this subparagraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the cabinet that the construction activity will take place, and storm water discharge will occur, within the drainage area addressed by the TMDL or equivalent analysis; (b) Any other construction activity designated by the cabinet or the EPA Regional Administrator, based on the potential for contribution to water quality degradation that is not significant contribution of pollutants to waters of the commonwealth. (254) "Stepper well" means any oil well producing ten (10) barrels or less per day of oil. (256) "Submersion" means, for purposes of 401 KAR 5-057; (a) a request by a POTW to the cabinet for approval of a pre-treatment program; and (b) a request by a POTW to the cabinet for authority to exceed the discharge limits in categorical pre-treatment standards to reflect POTW pollutant removals. (256) "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains no other greater than two and zero tenths (2.0) percent total solids by dry weight analysis. (159)(b)(7) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 28. (160)(b)(8) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. [Effluent guidelines set lagoons and trenches with effluent ditches that are] are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth. (161)(b)(9) "SWDA" means the Solid Waste Disposal Act, as amended, 42 U.S.C. 6001 et seq. (162) "Tank battery" means an installation where oil is collected from wellsheads and is separated from produced water. (301) "TDS" means total dissolved solids. (302) "Thermocline" means the phase in a normally stratified body of water in which the maximum rate of decrease in temperature occurs with respect to depth. (303) "TMDL" means total maximum daily load. (304) "Total dissolved solids" or "TDS" is defined by 40 C.F.R. 122.2, effective July 1, 2006 means the total dissolved solids (noniterable residue) as determined by use of the method specified in 40 C.F.R. Part 136. (305) "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's source. (306) "Total suspended solids" or "TSS" means the total suspended solids (noniterable residue) as determined by use of the method specified in 40 C.F.R. Part 136. (307) "Toxic pollutant" means, as used in 401 KAR 5-050 through 401 KAR 5-050 to 401 KAR 5-080, any pollutant listed as being toxic in 401 KAR 5-080. (165) "UC" means Underground Injection Control.
regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

section 2 (334) "Well-injector" means the sub-surface emplacement of fluids through a bored, drilled, or driven well, or through a dug well where the depth of the dug well is greater than the largest surface dimension.

section 3 (330) "Wetlands" as defined by 40 C.F.R. 122.2, effective July 1, 2008 (means land that has a predominance of hydrophytic vegetation typically adapted for life in saturated soil conditions).

section 2 (331) "Whole-effect toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

section 3 (329) "Wwtp" means wastewater treatment plant.

section 3 (332) "Zene" means a subsurface layer or stratum capable of producing or receiving fluids.

section 3 (333) "Zone-of-initial-dilution" means the limited area permitted by the cabinet surrounding a discharge from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water intermix.

section 3 (336) "Zone-of-saturation" means the zone in which all the sub-surface voids in the rock or soil are filled with water.

section 3 (337) "100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of one hundred (100) years, as determined by "Rainfall Frequency Values for Kentucky". Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979, incorporated by reference in section 2 of this administrative regulation.

Section 2: Federal Regulations-Adequate Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to applicable copyright law, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.


- 349 -
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

regulation: It is necessary to amend this administrative regulation to achieve compliance with federal regulations. If the regulation is not amended as proposed, the state regulation will be inconsistent with the corresponding federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment removes discrepancies between current state and federal regulations.

(e) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

- Individuals: Approximately 170 per year through construction permits for individual family residences and approximately 400 per year through permit re-issuances.

- Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and storm water coverage issuances.

- Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.

- State or Local Government: Approximately 200 per year, primarily through construction permits for sewer line extensions. The construction permit requirements for new or expanded treatment facilities effect approximately 20 of these. Approximately 30 require a KPDES discharge permit re-issuance each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will use the definitions to interpret the requirements of regulations in 401 KAR Chapter 5.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this amendment, individuals, businesses, and organizations are not expected to incur any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and updated federal regulations.

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

(a) Initially: There will be no cost.

(b) On a continuing basis: There will be no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.

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

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

(9) TIERING: Is tiering applied? To the extent that corresponding federal regulations provide for tiering, these amendments are tiered.

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? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems and facilities that discharge pollutants to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit, a KDOP permit, or a KISOP permit.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? No additional cost is expected.
(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.
Note: If specific dollar estimates cannot be determined, provide a brief explanation to discuss the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON
2. State compliance standards. KRS 224.10-100.
3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primary states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, 33 U.S.C. 1251-1387.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:005. Permits to construct, modify, or operate a facility.


STATUTORY AUTHORITY: KRS 224.01-414(4) 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100[4] requires the [Environmental- and Public Protection] Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. EO 2008-507 and 2008-521 effective June 18, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized by [under] KRS Chapter 224 and establishes conditions for construction of facilities under 401 KAR Chapter 5 [the chapter]. The administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits. There is not a [re] federal law or regulation relating to construction requirements for wastewater treatment plants or the operational requirements for no discharge configurations, therefore, this administrative regulation is not more stringent than the federal requirements. The operational permit requirements are contained in the KPDES administrative regulations in 401 KAR 5:005 through 5:008 which are the same as the federal requirements.

Section 1. Applicability. (1) This administrative regulation shall apply to an owner and an operator of a sewage system, except:
(a) A septic tank with a subsurface discharge;
(b) A pretreatment facility regulated by a pretreatment program or intermunicipal agreement, approved pursuant to 401 KAR 5:057, or
(c) An authorization by permit or rule that is prepared to assure that underground injection will not endanger a drinking water supply, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300q, and that are issued pursuant to a state or federal Underground Injection Control program; and
(d) An underground injection control well that is permitted pursuant to 40 C.F.R. 144.
1. The permit is protective of public health and welfare; and
2. The permit prevents the pollution of ground and surface waters. Owners and operators of facilities subject to the administrative regulations of this chapter.
(c) Unless exempted pursuant to subsection (3)(b) of this section or paragraph (a) of this subsection, a person shall not construct, modify, or operate a facility without having received a permit from the cabinet.
(a) A construction or modification permit shall not be required for maintenance replacement for components of an existing facility or for changes that [which] do not affect the treatment processes of the facility, but shall be required for replacement of an entire wastewater treatment plant (WWTP).
(b) The operational permit provisions of Section 27 of this administrative regulation shall be satisfied by those facilities that [which] have a valid KPDES permit [issued pursuant to 401 KAR 5:050 to 401 KAR 5:080].
3. (This subsection shall apply to an agricultural waste handling system, industrial WWTP, or a [flood] storm water WWTP.
(a) The following requirements shall apply to an agricultural waste handling system [system, as defined by 401 KAR 6:002]:
1. An agricultural waste handling system that conveys, stores, or treats [Agricultural wastes handling systems, which convey, store, or treat] manure from a concentrated animal feeding operation [as defined by 401 KAR 6:002] shall:
(a) Obtain a permit to construct or modify the facility, pursuant to [as defined by 2 sections 2 and 14(2) and 24(2) and 26(3)] authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize](and (i) of this administrative regulation; and
(b) Obtain a KPDES permit [and (as defined by 401 KAR 6:002) to 401 KAR 6:080].
2. All other agricultural waste handling systems shall:
(a) Obtain a permit to construct, modify, or operate the facility pursuant to [as defined by 2 sections 2, 24, 25, 27, and 30(209)] authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize](and (i) of this administrative regulation; and
(b) Obtain a Kentucky No Discharge Operable Permit (KNOPP). A KPDES permit is not required for these facilities.
(b) The following shall apply to industrial wastewater treatment plants (IWTPs) as defined by 401 KAR 5:002:
1. An IWTP with a closed loop system or a system that uses spray irrigation for disposal shall:
a. Obtain a KPDES permit; and
b. Comply with Sections 2, 25, 27, and 30(209) authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize](through (h) of this administrative regulation; and
(b) Not be required to obtain a permit to construct or modify the facility. IWTPs with closed loop systems shall obtain a KPDES permit authorizing the facilities, complying with only Sections 2, 25, 27, and 30(209) authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize][i.e., authorize](through (g) of this administrative regulation and any other applicable standards or requirements of 401 KAR Chapter 6. A KPDES permit shall not be
VOLUME 36, NUMBER 2—AUGUST 1, 2009

required for these facilities]; or

2. An [IWTP [WWTP]s] with a discharge to the waters of the Commonwealth shall [not be required to obtain a permit to construct or modify the facility. These facilities shall, however]:
   a. Comply with the ["]Five Mile Limit Policy["—incorporated by reference in Section 29 of this administrative regulation];
   b. Obtain a KPDES permit to discharge into the waters of the Commonwealth; and
   c. Comply with any other applicable standard or requirement [all other requirements] of 401 KAR Chapter 5; and
   d. Not be required to obtain a permit to construct or modify the facility end[.]”

3. A sewer line that conveys wastewater to an [IWTP [Sewer line that convey wastewater to WWTPs]] shall not be required to obtain a construction permit.

(c) The following requirements shall apply to a WWTP that collects, conveys, or treats [WWTPs which collected, convey, or treat] only storm water:

   1. A permit to construct or modify the facility shall not be required for a WWTP that collects, conveys, or treats [WWTPs which collected, convey, or treat] only storm water and discharges [discharge] into the waters of the Commonwealth [shall not be required to obtain a permit to construct or modify the facility pursuant to this administrative regulation].
   a. These facilities shall, however, comply with 401 KAR 5.035 [for purposes of] 5:020 and 401 KAR 10:02 through 10:03.
   b. 401 KAR 5.060 establishes if [further specifies when] these facilities shall [are required to] obtain a KPDES permit.
   c. A WWTP that collects, conveys, or treats [WWTPs which collected, convey, or treat] only storm water and does [do] not discharge into the waters of the Commonwealth shall obtain an operational permit pursuant to [under this administrative regulation, depending on the only] Sections 2, 25, 27, and 30(29)(1)(s) through (t) of this administrative regulation. [A KPDES permit shall not be required for these facilities.]

Section 2. Application Submittal. (1) An application to construct, modify, or operate a facility, or renew the operational permit for a facility for a facility shall be submitted on the applicable forms established in this subsection [following applicable forms]. [incorporated by reference in Section 29 of this administrative regulation] and shall include the applicable supporting information pursuant to [required by] Section 3 of this administrative regulation, applicable KPDES permit fees pursuant to [required by] Section 5 of this administrative regulation, applicable modification or operating permit fees, and plans and specifications for the proposed construction or modification pursuant to [required by] Section 6 of this administrative regulation.

(a) For construction of a sewer line extension [extension], the applicant shall submit a completed Construction Permit Application for Sewer Line Extension[extension]—Form S-1 and a fee in accordance with Section 5 of this administrative regulation.

(b) For construction of a WWTP or WWTP with a sewer line [projects for WWTPs or WWTPs with sewer lines] with a direct discharge, the applicant shall submit or shall have submitted;

   1. The completed KPDES applications pursuant to [required by] 401 KAR 5.060; and
   2. A completed Construction Permit Application for Wastewater Treatment Plant[extension]—Form W-1. The applicant shall also submit a construction permit fee in accordance with Section 5 of the administrative regulation and a KPDES permit fee in accordance with KRS 224.70-429.

(c) For a WWTP construction project [project] without a discharge other than an agricultural waste handling system [system], the applicant shall submit; 1. A completed Construction Permit Application for Wastewater Treatment Plant, Form W-1; and

   2. A completed Kentucky No Discharge Operational Permit (KNOPD) Permit (KNOPD) other than an agricultural waste handling system [system], the applicant shall submit a completed Kentucky No Discharge Operational Permit Application, Form ND.

   (e) For construction, renewal, modification, or operation of agricultural waste handling systems that do not discharge and do not intend to discharge, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Waste Handling Systems, Short Form B.

   (f) For a construction approval, an applicant [approval] shall also submit a completed Site Survey Request.

   (g) For construction of minor modifications to a WWTP, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant and a fee in accordance with Section 6 of the administrative regulation, and the completed KPDES applications required by 401 KAR 5.060.

   (h) For operational permits or renewals of operational permits for publicly owned sewer systems that [which] have at least 5,000 linear feet of sewer line and that [which] discharge to a sewer system or a WWTP that [which] is owned by another person, the applicant shall submit a completed Kentucky Inter-Municipal [Inter-Municipal] Operational Permit Application.

   (i) Signs. (a) An application [Applications] and all reports required by the permitting [permits] shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility.

   1. For a municipality, state, federal, or other public agency, the signee shall be a principal executive officer or ranking elected official or the designee.

   2. An application or report may be signed by a duly authorized representative, if the authorization has been made in writing by the responsible person.

   (b) Certification. Any person signing a document in accordance with [under] paragraph (a) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violators."

Section 3. Application; Construction Permit Supporting Information [For those facilities required to submit a Construction Permit Application for Wastewater Treatment Plant or Construction Permit Application for Sewer Line Extensions, the following information items shall be submitted as part of the application or with the application pursuant to [required by] Section 2 of this administrative regulation]. Any applicable fee required by Section 5 of this administrative regulation, and the plans and specifications for the construction project required by Section 6 of this administrative regulation:

   (1) The applicant shall identify who will inspect and certify that the facility under construction conforms to [with] the plans and specifications approved by the cabinet in accordance with this administrative regulation.

   (b) Facilities designed by an engineer shall be inspected and certified by an engineer.

   (2) The applicant shall provide:

      (a) An estimate for the cost of the facility and the sources of project funding;

      (b) The applicant shall provide a USGS 7.5 minute topographic map with the proposed project site identified;

      (c) The North American Datum 1983 (NAD 83), degree, minute, and second measurement of the proposed project's latitude and longitude; and

      (d) An estimate, and the basis for the estimate, for the average daily flow added by the proposed project.

   (3) The applicant shall provide a closure plan.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(a) If an existing facility or a portion of a facility will be taken out of service, the applicant shall submit a closure plan discussing the following items:

1. How the facility will be constructed and how the sewage will be diverted to the new construction without a bypass to a stream. If a bypass is unavoidable during construction, the applicant shall submit:
   a. An explanation of why construction cannot occur without the bypass;
   b. An estimate of the shortest duration for the construction to be completed;
   c. A description of all equipment, material, labor, and any other items necessary to complete the construction; and
   d. An estimate of when the necessary items for the construction will be on-site;

2. How the contents of the facility will be removed and properly disposed;

3. How the abandoned facility will be removed or filled and covered; and

4. How the abandoned sewers will be plugged and manholes filled and covered.

(b) If an existing WWTP discharge is eliminated, the owner of the WWTP shall submit a completed No Discharge Certification[7]; incorporated by reference in Section 29 of the administrative regulations; within thirty (30) days after the elimination of the discharge[7].

5. Preliminary submittal. Applicants for WWTP construction permits may submit the following information prior to formal submission of the construction application, to allow the applicant to receive a preliminary determination on the suitability of the proposed discharge location and preliminary effluent limits used in the design of the facility.

(a) If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application.

(b) The preliminary determination shall be valid for up to one (1) year after issuance of the preliminary determination or until the issuance of the KPDES permit, whichever occurs first.

(c) The preliminary determination shall not be a guarantee of final permit limits and may be changed as a result of information presented during the public notice phase of the KPDES permitting procedure.

(d) The preliminary effluent limits shall be [are] contingent upon the validity, accuracy, and completeness of the following information that the applicant shall submit [submitted by the applicant]:

1. A reproducible copy of a USGS 7.5 minute topographic map with the projected service area outlined, the proposed WWTP location, and the discharge points identified on the map;

2. If a regional facility plan or water quality management plan is being or has been developed, a letter from the regional planning agency stating whether the applicant's project is compatible with the regional facility plan or water quality management plan. The letter shall state the compatibility of the project with the plan;

3. For a new or an expansion of an existing regional facility pursuant to 401 KAR 6:005, a regional facility plan or water quality management plan.

b. The planning requirements of [8][Recommended Standards for Wastewater Facilities][9][[Ten States' Standards][10][Incorporated by reference in Section 29 of the administrative regulation], shall be satisfied by the cabinet's approval of a regional facility plan or a water quality management plan; and

4. For a WWTP project [projects], a demonstration that the users of the proposed WWTP cannot be served by an existing regional facility. [The applicant shall demonstrate that a connection to a regional facility is not available.] The applicant shall provide a detailed evaluation of alternatives by conducting a twenty (20) year present worth cost analysis.

a. The distance criteria for determining availability shall not apply to a WWTP (WWTPs) with an average daily design capacity less than or equal to 1,000 gpd.

b. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; and

5. An estimate and the basis for the estimate of the average daily flow added by the proposed project;

5.7 For a WWTP project [projects], the applicant shall submit the following influent design values:

(a) Average daily flow;

(b) Peak daily flow;

(c) Peak hourly flow;

(d) Instantaneous flow;

(e) [Influent] BOD;

(f) [Influent] suspended solids; [and]

(g) Phosphorus, and

(h) Ammonium nitrogen (NH₄-N; of the influent).

6. For a WWTP project [projects], if the discharge point of a proposed WWTP fails to coincide with a stream indicated as a blue line on a USGS 7.5 minute topographic map, the applicant shall demonstrate that the applicant has a recorded deed, recorded other right of ownership, or recorded right of easement to discharge the applicant's effluent across any land owner's property that [which] comes between the point of discharge and a blue line stream[.]

7. For a WWTP project [projects], the applicant shall submit a copy of the plat or survey clearly indicating the property boundaries, the position of the proposed facility, and the position of the dwellings within 200 feet of the WWTP[.]

8. For a WWTP project [projects], the applicant shall provide a sludge management plan that includes the method of sludge processing and ultimate sludge disposal[.]

9. For a WWTP project [projects], the applicant shall indicate that laboratory services shall be provided for self-monitoring and process control to ensure that the WWTP operation complies with the permit[and].

10. For a WWTP project [projects], the applicant shall submit:

(a) A schematic drawing of the WWTP layout and detailed explanation of the proposed facility and its method of operation;

(b) The WWTP's reliability category and a demonstration of how the WWTP complies with the reliability requirements in Section 13 of the administrative regulation; and

(c) The design calculations [criteria] used to size the unit processes.

Section 4. Application: Preliminary Considerations. 1. A permit shall not be granted to an [any] facility that [which] is not compatible[. if determined by the cabinet], with a regional facility plan or with a water quality management plan approved by the cabinet or the U.S. EPA.

2. A new open-top component of a WWTP shall not be located within 200 feet of an existing dwelling or property line, except:

(a) A WWTP that serves an individual residence shall not be required to be at least 200 feet from the dwelling that it serves; and

(b) An open-top component of a WWTP may be located within 200 feet of another dwelling that the WWTP does not serve or a property line if:

1. The WWTP or component is enclosed within a building that controls odors and dampens noise; or

2. The applicant demonstrates that an equivalent method for noise and odor control shall be provided [A WWTP which serves an individual residence may be located within 200 feet of the dwelling that it serves. An open-top WWTP may be located within 200 feet of another dwelling which the WWTP does not serve, only if the WWTP is enclosed within a building which controls odors and dampens noise or the applicant demonstrates an equivalent method for noise and odor control will be provided].

3. [Any] discharge point or [and] direct discharge [discharged or discharged] into a wellhead protection area shall comply with Water Policy Memorandum No. 04-02, [[Five Mile Limit Policy if that public drinking water well or spring is under the direct influence of surface water], incorporated by reference in Section 29 of the administrative regulation].

4. The initial suitability of a [any] location for a proposed discharge point or spray irrigation field shall be determined by the cabinet after site inspection. In determining the suitability of the location, the cabinet shall [may] consider the:
(a) The distance to the nearest dwelling. 
(b) Distance to water intake used for a public water supply. 
(c) Downstream land use. 
(d) Physical characteristics and current use of the stream. 
(e) Physical characteristics of the proposed spray field including karst topography. 
(f) Need for easements. 
(g) Location of property boundaries. 
(h) Other items consistent with this administrative regulation and KRS Chapter 224. 

(5) If the discharge from the WWTP enters a sinkhole directly or enters a discharging stream, the applicant shall submit a proposal for a groundwater tracer study or results from a previously conducted study to the cabinet. 

(a) The cabinet shall accept a groundwater tracer study or a proposal for a groundwater tracer study if it is sufficiently scientifically rigorous to:
1. Establish if a hydrologic connection exists with surface waters that may result in additional or more stringent permit limitations. 
2. Establish if a hydrologic connection exists with domestic water supply intakes within five (5) miles; and 
3. Establish if a hydrologic connection exists with drinking water wells within five (5) miles. 

(b) The cabinet shall notify the applicant of the cabinet's acceptance or denial of a proposed groundwater tracer study. 

(c) If the cabinet accepts a proposal for a groundwater tracer study, the applicant shall conduct the groundwater tracer study and submit the completed groundwater tracer study to the cabinet. 

(d) The cabinet shall issue, deny, or modify the permit based upon the findings of a scientifically rigorous groundwater tracer study. The results of the groundwater tracer study shall be submitted to the cabinet for approval. The cabinet will review the results to determine if a discharge is approvable. 

(e) The cabinet may condition or deny a permit to construct or expand a facility based on its compatibility with a regional facility plan or the availability of a regional facility. 

(f) Permits to construct, expand, or operate a sewer system shall require connection to a regional facility if when one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available. 

(g) The distance criteria to determine if a regional facility is available shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow. 

(7) Pursuant to 401 KAR 5:300, the cabinet may coordinate issuance of a construction permit for WWTPs that require a new KPDES permit or modification to the KPDES permit with the issuance of the KPDES permit to ensure that public comments received as a result of the public notice requirements of 401 KAR 5:075 shall be considered in the issuance of the construction permit. 

(a) The cabinet may also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP. 

(b) The cabinet may condition or deny the construction permit based on those public comments. 

(3) The applicant shall make checks or money orders payable to the Kentucky State Treasurer. 

(4) Construction permit fees shall be as shown on the following schedule, except as provided in subsection (5) of this section. 

<table>
<thead>
<tr>
<th>Facility Category</th>
<th>Construction Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Facility: WWTP</td>
<td>$1,800</td>
</tr>
<tr>
<td>Intermediate Facility: WWTP</td>
<td>$900</td>
</tr>
<tr>
<td>Small Facility: WWTP</td>
<td>$450</td>
</tr>
<tr>
<td>Minor Modification to a WWTP</td>
<td>$200</td>
</tr>
<tr>
<td>Small Facility for Nonprofit Organizations pursuant to KRS 224.16-050(5)</td>
<td>$50</td>
</tr>
<tr>
<td>Large Facility: Sewer Lines</td>
<td>$800</td>
</tr>
<tr>
<td>Intermediate Facility: Sewer Lines</td>
<td>$400</td>
</tr>
<tr>
<td>Small Facility: Sewer Lines</td>
<td>$200</td>
</tr>
</tbody>
</table>

(5) Fees established in this section shall not apply to an agricultural waste handling system or to a renewal of a KNDOP permit. 

(6) The WWTP fee shall apply to the WWTP project and any sewer or pump stations located on the plant property. 

(a) A sewer fee shall apply to all sewers, force mains, and pump stations that are bound together as one (1) set of plans. 

(b) If a WWTP project includes sewers, force mains, or pump stations located off of the plant property, at least two (2) fees shall be submitted. 

(7) To qualify for the reduced fee in subsection (4) of this section, nonprofit organizations shall submit proof that they are qualified pursuant to 26 U.S.C. 501(c)(3) (under Section 501(c)(3) of the Internal Revenue Code). 

Section 6. Plans and Specifications. (1) The applicant shall submit to the cabinet at least three (3) sets of detailed plans and specifications for the facility. Plans for gravity sewer lines and force mains shall include a plan view and a profile view. (The submittal shall be accompanied by a completed permit application on the forms required by Section 2 of this administrative regulation and the applicable items required by the administrative regulation.) 

(2) The cabinet may request additional information as necessary to evaluate the facility to ensure compliance with this administrative regulation. 

(3) If cabinet approval is obtained, changes shall not be made to the plans and specifications that would alter or affect the location, capacity, type of treatment process, discharge location, or quality of effluent without issuance of a modified permit from the cabinet. 

(4) If a proposed facility will become a part of a sewer system served by a regional facility or has a projected average daily design capacity of 10,000 gpd or more, the plans and specifications shall be prepared, stamped, signed, and dated by a professional engineer. 

(5) The plans shall be accompanied by engineering calculations necessary for the understanding of the basis and design of the facility. 

(6) If a proposed facility's design capacity is less than 10,000 gpd, the cabinet may require the plans to be prepared, stamped, signed, and dated by a professional engineer if there is not sufficient operating data available from previous similar installations. Operation data shall demonstrate that water quality standards have not been violated and that there have not been significant operational problems. 

Section 7. Design Considerations. (1)(a) Facilities, except an extended aeration package WWTP [WWTPs] with an average daily design capacity less than 100,000 gpd, shall be designed in accordance with the [Recommended Standards for Wastewater Facilities] of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, commonly referred to as [Ten States' Standards], 1960 edition, incorporated by reference in Section 20 of this administrative regulation. 

1. A deviation [Deviations] from the [Ten States' Standards] requirements shall [may] be approved if the applicant submits a written request for a deviation with the basis for the re-
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

quest pursuant to this paragraph.

2. The basis for the dewatering request shall be supported by current engineering practice. Some references to current engineering practice may be found in "The [any Manual of Practice" published by the -Water Environment Federation and the "Wastewater Engineering Treatment, Disposal, Reuse and -Third Edition," by N. Met-
calfe and Eddy, Inc.

3. Design calculations and other supporting documentation to support the dewatering shall be submitted to the cabinet.

(b) Other practices may be required by the cabinet based on the cabinet's best professional judgment that the practices are necessary for the protection of public health and the environment.

(c) Other practices shall be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate that operational problems have not occurred, and that water quality standards have not been violated, and design calculations and documentation to support the other practices have been submitted to the cabinet.

(d) It is recommended that WWTPs with an average daily design capacity less than 100,000 gpd shall comply with Section 10 of this administrative regulation and any other applicable sections.

(3) The applicant shall demonstrate [to the cabinet] that the effluent from a proposed facility shall [will]:

(a) Protect those minimum conditions listed in 401 KAR 10-031 that are applicable to all waters of the Commonwealth [found in 401 KAR 5-031];

(b) Not cause those waters designated as classified by 401 KAR 10-026 or categorized by 401 KAR 10-030 to be of lesser quality than the numerical criteria applicable to those waters in 401 KAR 10-031 or the requirements of 401 KAR 10-030 (6-000); and

(c) Be in accordance with any [general or particular] facility requirements established in [mandated by] 401 KAR Chapter 5.

(4)[(4)] Each WWTP shall have a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of ±10 percent.

(a) The flow measuring device shall measure all flow discharged by the WWTP including any bypasses.

(b) An indicating, recording, and totaling flow measuring device shall be installed at each large WWTP.

(c) A flow measuring device for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

(4) A bypass or overflow structure [structure(s)] of any type shall not be constructed in or across a sewer line or pump station or at a [any] WWTP if:

(a) Construction of the bypass or overflow structure is necessary to prevent loss of life, personal injury, or severe property damage and there is not a [feasible] alternative; or

(b) The bypass or overflow structure is for essential maintenance and it does not cause effluent limitations or water quality standards as established in 401 KAR 10-031 to be exceeded [specifically approved by the cabinet in writing].

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the other person.

(2) The applicant shall submit letters from:

(a) The owner of the sewer line extension stating that the owner shall [will] accept operation and maintenance responsibilities for the sewer line extension [as] when it is constructed.

(b) The owner of the sewer system stating that the owner approves the connection and accepts responsibility for the additional flow; and

(c) The owner of the WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection shall not be [be not] subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny a sewer line extension for that portion of the sewer system if the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that [which] addresses these conditions has been submitted [approved] and is being implemented.

(4) If the applicant shall demonstrate that the WWTP that [which] receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that [which] addresses these conditions has been submitted [approved] and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line. This limitation includes manholes, gravity sewer lines, and appurtenances.

(6) The integrity of a new gravity sewer line shall be verified by either the infiltration-exfiltration or low pressure air testing method.

1. An infiltration-exfiltration test shall be performed with a minimum positive head of two (2) feet.

2. A deflection test shall be performed for each new flexible pipe line. The deflection shall be not less than 5 percent.

3. Each new manhole shall be tested for watertightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a consolidation sewer, a flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan;

(b) Enhances water quality; and

(c) Protects public health and safety.

(8) A gravity sewer line [line(s)] and a force main [main] shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second.

(a) The roughness coefficient used in the Manning or Kutter's formula shall be 0.013, or the "C" factor used in the Hazen-Williams formula shall be 100.

(b) If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used.

(c) A roughness coefficient [coefficient(s)] between 0.013 and 0.011 may be used [specified] for other pipe materials if sufficient documentation of experimental testing is submitted to the cabinet and if the testing supports the use of the design roughness coefficient [specified coefficient] approved by the cabinet.

(9) A gravity sewer line [line(s)] and a force main [main] shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If a gravity sewer line [line(s)] and a force main [main] are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum diameter [size] for a conventional gravity sewer line [line] shall be eight (8) inches, except that:

(a) The minimum diameter for an extension to an eight (8) inch or larger sewer line [if a future extension is not feasible] shall be six (6) inches.

(b) The minimum diameter for an extension to a six (6) inch sewer line shall be six (6) inches.

(c) A sewer line shall be sized based upon engineering calculations consistent with current engineering practices [a six (6)-inch sewer line may be approved if no future extension is possible]. Alternative type sewer systems may be approved if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred.

(12) A manhole shall be provided at the junction of two (2) building sewers. This subsection shall not apply building sewers that [which] serve a single-family residence [residences].
The following building sewers shall be exempt from the requirements of this administrative regulation:
(a) A gravity sewer [sewers which]:
1. Discharges [Have a diameter of less than eight (8) inches and discharge] directly to the sewer main; and
2. Serves a single building; and [Serve a single-family residence building or a multifamily residence building with four (4) dwelling units or less; or]
3. Serves a single office building or a single mercantile building with an occupant load of less than thirty (30) persons.
(b) A force main sewer [sewers], regardless of the location of the pump station that:
1. Discharges [Have a length of least five (5) miles and discharge] directly to a gravity sewer main; and
2. Serves a single building [Serve a single-family residence building or multifamily residence building with four (4) dwelling units or less; or]
3. Serves a single office building or a single mercantile building with an occupant load of less than thirty (30) persons.

(14) Except as provided in paragraph (b) of this subsection, a sewer line [Sewer lines] shall be located at least fifty (50) feet away from an intermittent or perennial stream [stream which appears as a blue line on a USGS 7.5-minute topographic map] except where the sewer alignment crosses the stream.
(a) The distance shall be measured from the top of the stream bank.
(b) The applicant may request a variance from the requirement established in this subsection [The cabinet may allow construction within the fifty (50) feet buffer if adequate methods are used to prevent the soil from entering the stream].
(c) A gravity sewer line [lines] and a force main [mains] that cross streets shall be constructed by a method that maintains [methods which maintain] normal stream flow and allows [allow] for a dry excavation.

(a) Water pumped from the excavation shall be contained and allowed to settle prior to reentering the stream.
(b) Excavation equipment and vehicles shall operate outside of the flowing portion of the stream.
(c) Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(a) A pump station jetwell [jetwells] shall have a vent.
(b) A pump station [stations] shall provide a minimum of two (2) hours of detention, based on the average design flow, above the level of the wet well or provide an alternate source of power with jetwell storage providing sufficient time for the alternative power source to be activated.

(a) Each high point in the force main shall have an automatic air release [valves].

(a) The applicant shall submit a performance curve for a proposed pump station [stations].
(b) A simplex design shall be used only for a pump station that serves [stations which serve] an individual residence or business, and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems served by regional WWTPs, and political subdivision facilities with KISOPs [KIMOPs].

(a) For each regional WWTP, the cabinet shall review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months. If the annual average flow or organic load, or for systems with combined sewer lines the lowest monthly flow and associated organic load, exceed the following values, the cabinet shall advise the owner of the WWTP of the need to address the potential overload condition pursuant to subsection (2) of this section:
(a) For a regional WWTP with a design capacity of ten (10) mgd or less, ninety (90) percent of the WWTP's average daily design capacity; or
(b) For a regional WWTP with a design capacity of more than ten (10) mgd, ninety-five (95) percent of the WWTP's average daily design capacity.

(2) The cabinet shall [may] deny the approval of a [any] sewer line extension until the owner of the WWTP agrees to address [commits to addressing] the potential overload condition identified in subsection (1) of this section. The owner shall [may] address the condition by:
(a) If demonstrating, with supporting documentation, that the average daily design capacity of the plant is greater than the permitted amount,

(2) [The cabinet shall review the request and if justified, shall issue a revised average daily design capacity for the WWTP by issuing a modification to the KISOP permit;]
(b) Expanding the WWTP to a size sufficient to handle the anticipated flows and loads; or
(c) Performing other remedial measures that [which] address the condition.

(3) The cabinet shall deny a sewer line extension that is [extensions which are] of sufficient flow, adds load [loads] that exceeds [loads which exceed] the percent identified in subsection (1)(a) or (b) of this section, as applicable, or [and] a political subdivision KISOP facility that [KIMOP facility which is] subject to exceedance of water quality problem:

(a) Receives [Receive] more than 275 gallons per capita per day of sewage flow based on the maximum flow received during a twenty-four (24) hour period exclusive of industrial flow; or
(b) Receives [Receive] more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow.

(b) If subject to excessive infiltration or excessive inflow, a regional WWTP [WWTPs], sewer system [systems] served by a regional WWTP, or a political subdivision facility with a KISOP [KISOPs] [facilities with KIMOPs which are] subject to excessive infiltration or excessive inflow:

(5) The study shall determine if the infiltration-inflow can be removed in a cost-effective manner by using a twenty (20) year present worth cost analysis and if it cannot be [are not], shall identify the modifications to the sewer system, affected portion of the sewer system, or affected portion of the WWTP [that are] necessary to transport and treat the infiltration-inflow:

(a) A schedule for completion of the necessary modifications shall also be prepared.
(b) 1. The schedule and study shall be submitted to the cabinet for review and approval.
2. Approval shall be based on cost and length of time required to correct the Infiltration-Inflow.

(b) For the infiltration-inflow study of the sewer system or the affected portion of the sewer system, the owner shall:

(a) Use a map of the sewer system or the affected portion of the sewer system to select manholes for the installation of flow monitoring equipment;
(b) Install equipment to monitor flow at the key manholes, groundwater levels, and rainfall volume and duration for a period of thirty (30) to ninety (90) days;
(c) Conduct physical surveys, smoke tests, and dye water studies of the affected portion of the sewer system;
(d) Evaluate the cost-effectiveness of transportation and treatment versus correction of the infiltration-inflow sources by using a twenty (20) year present worth cost analysis;
(e) If justified, internally inspect the sewer lines in the affected portion of the sewer system to determine the rehabilitation locations and methods if the rehabilitation locations and methods cannot be established by other analysis;
(f) Develop plans for rehabilitation of the affected portion of the sewer system or modifications to the affected portion of the facility.
necessary to transport and treat all flows; and
(g) Develop a schedule for completion of the rehabilitation or modifications.
(7)(a) The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the approved schedule to which the applicant and cabinet agree.
(b) The cabinet may deny a further sewer line extension [extension] if the owner is not meeting the schedule or is not making acceptable progress that follows the [toward meeting the approved] schedule.

Section 10. Extended Aeration Package WWTP Requirements.
This section shall apply to an extended aeration package WWTP [WWTPs] intended to treat only domestic sewage but shall not apply to an extended aeration package WWTP that serves [WWTPs which serve] an individual residence.
(1) A bar screen shall be provided for each plant, except those with trash traps pursuant to Section 14 of this administrative regulation.
(2) The aeration chamber shall have a minimum detention time of twenty-four (24) hours based on the average design flow.
(3) A minimum of 2,050 cubic feet of air shall be provided per pound of BOD.
(4) The clarifier shall have:
(a) A minimum detention time of four (4) hours based on the average design flow;
(b) A surface overflow rate of less than 1,000 GPD/m² [liters per minute] and
(c) A solids loading of less than thirty-five (35) lb/ft² based on the peak daily design flow rate.
(5) A positive sludge return shall be provided.
(6)(a) A source of water shall be provided for cleanup.
(b) If a potable source is provided, backflow preventers shall be installed to protect the water supply.
(7) Fencing with a lockable gate shall be installed around the plant site.
(8) An all-weather access road to the plant shall be provided.
(9) A sludge holding system shall be provided for each large WWTP. The sludge holding system shall:
(a) Provide two (2) cubic feet of volume per 100 gallons of WWTP design treatment capacity;
(b) Provide thirty (30) cubic feet per minute (cfm) of air per 1,000 cubic feet of tank volume;
(c) Be designed to prevent overflows; and
(d) Transport supernatant to the aeration chamber.
(10) For a large WWTP [WWTPs], motors and blowers shall be installed sufficient to handle the load if the largest unit is taken out of service.
(11) If food grinders are used, treatment units shall be designed for treating the additional BOD loading; additional treatment processes may be required.
(12) Post aeration, if required by effluent limits, shall be designed to raise the effluent dissolved oxygen from two (2) mg/l to the required effluent concentration.
(a) If a diffused air system is used, a minimum blower capacity of 0.154 cubic feet per minute (cfm) per 1,000 gallons of average daily design capacity shall be provided.
(b) If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.
(12) A WWTP [WWTPs] with a monthly average permit limit [limits] for CBOD of twenty (20) mg/l or less shall provide additional treatment [units].
(13) A WWTP that serves a restaurant [WWTPs which serve] [restaurants] or other similar establishment [establishments] where food is prepared and served and a food grinder is [grinders are] used shall be designed to treat the additional BOD loading.
(14) Effluent discharge piping for a new WWTP [WWTPs], except in geographical facilities, shall be designed to transport sewage to facilitate a future connection to a regional facility.
(15) A package extended aeration WWTP [WWTPs] may be used if the manufacturer or a professional engineer certifies that the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection.
(1) All WWTPs shall have a disinfection process that [which] meets the following requirements:
(a) An ultraviolet disinfection system designed to treat the anticipated peak hourly flow;
(b) A chlorination system with a flow or demand proportional feed system.
(2) The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size.
(3) A WWTP [WWTPs] shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits.
(4) Other disinfection processes may be approved if they provide equivalent treatment [may be approved by the cabinet].
(5) Tablet type chlorination equipment shall not be used in an intermediate or large WWTP [WWTPs].

This section shall apply to a new large WWTP [WWTPs].
(a) Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of ± ten (10) percent.
(b) The flow measuring device shall measure all flow received at the WWTP.
(c) An indicating, recording, and totaling flow measuring device shall be installed at each large WWTP.
(d) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.
(e) Multiple flow measuring devices shall be provided for the following:
1. A WWTP [WWTPs] that stores [stores] and hydraulically controls [controls] the release of effluent;
2. A WWTP [WWTPs] with flow equalization facilities that [which] shall be designed to more than the volume required to dampen the diurnal flow variations;
3. A WWTP [WWTPs] with a lagoon that has [lagoons that have] a detention time of greater than twenty-four (24) hours;
4. A WWTP [WWTPs] with the capability to bypass a treatment process, and
5. A WWTP [WWTPs] with more than one (1) discharge point.
(f) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:
(a) The weir shall be installed perpendicular to the axis of flow, and there shall not be [be] leakage at the weir edges or bottom;
(b) The weir plate shall be level and adjustable;
(c) The sides of a rectangular contracted weir shall be vertical;
(d) The angles of a V-notch weir [weirs] shall be cut precisely;
(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;
(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;
(g) For a weir [weirs] other than a suppressed, rectangular weir [weirs], the distance from the side of the weir to the sides of the approach channel shall be more than (1) foot or two (2) times the maximum weir head, whichever is greater;
(h) Air shall circulate freely under, and on both sides of, the nappe;
(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;
(1) The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe.

2. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

3. The minimum acceptable weir head shall be two-tenths (0.2) foot;

4. The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

5. The weir length for a rectangular, suppressed, or ciplottiet weir shall be at least three (3) times the maximum weir head; and

6. A reference staff gauge shall be provided.

Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be greater than ten (10) times the approach channel width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel, additional straight upstream channel length may be required to dissipate the velocity if necessary to maintain laminar flow.

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds (2/3) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest floor shall be level;

(f) Free flow conditions shall be maintained; and

(g) A reference staff gauge shall be provided for H₄ and H₅ to determine if submergence occurs.

(2) Other types of flow measuring devices shall [may be] approved by the cabinet if the device reasonably and accurately measures the flow.

Section 13. Reliability Categories. (1) A WWTP design shall:

(a) Provide sufficient treatment units to allow for cleaning and repair without causing a violation of effluent limits or a bypass from the sewer system or WWTP; and

(b) Provide storage or treatment capability sufficient to:

1. Contain or treat the volume of the largest tank if that tank is out of service; and

2. Contain or treat the flow received during the time needed to drain, complete cleaning, and accomplish an anticipated repair without causing a permit violation or bypass of a treatment process.

2. The cabinet shall determine the reliability grade of a WWTP based on the water quality use designation of the receiving stream, pursuant to 401 KAR 10:03.1.

(a) A Grade A WWTP shall have:

1. Treatment units and alternate power sufficient for the continuous use of all treatment processes and disinfection, with the exception of alternate power for the aeration equipment used in an activated sludge process; and

2. Full alternate power capacity for a discharge to a stream segment within five (5) miles of a public water supply intake.

(b) A Grade B WWTP shall have:

1. Treatment units sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

2. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary, primary, secondary, treatment, and disinfection processes, with the exception of alternate power for the aeration equipment used in an activated sludge process; or

3. If a small facility, a design that enables the small facility to connect to an emergency generator.

(c) A Grade C WWTP shall have:

1. Treatment units sufficient for the continuous use of the preliminary treatment, primary treatment and disinfection processes; and

2. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; or

3. If a small facility, a design that enables the small facility to connect to an emergency generator.

(d) If alternate power is required pursuant to this subsection:

1. Alternative power shall be provided from the connection to at least two (2) independent power sources or an emergency generator;

2. The cabinet may approve alternative measures for an intermediate facility or small facility if:

a. The applicant can demonstrate that those measures provide protection comparable to alternative power; and

b. The receiving stream is not an OSPW within five (5) miles of a public water supply intake, or within five (5) miles of a wellhead protection area.

3. The following WWTPs shall meet the requirements for a Grade A WWTP:

(a) A WWTP approved to discharge to a water body designated as an Outstanding State Resource Water pursuant to 401 KAR 10:03.1.

(b) A WWTP approved to discharge into a sinkhole or disappearing stream;

(c) A WWTP approved to discharge within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area.

4. A WWTP shall meet the requirements for a Grade B WWTP if it discharges within five (5) miles upstream of the head of an embayment of the lake at normal elevation.

5. Except as provided in subsection (6) of this section, a WWTP shall, at minimum, meet the requirements for a Grade C WWTP.

6. The cabinet shall not assign a grade to:

(a) A WWTP treating less than or equal to 1,000 gallons per day; or

(b) A WWTP serving an individual family residence. The cabinet shall determine the reliability category of a WWTP based on factors such as the size of the discharge, the size of the receiving stream, and downstream water quality classifications.

(2) WWTP reliability categories are divided into three (3) grades:

(a) Grade One WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of all treatment processes and disinfection;

(b) Grade Two WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

(c) Grade Three WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary and primary treatment processes and disinfection.

2. WWTPs which discharge to a waterbody designated in 401 KAR 6:300 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade One reliability category if the average daily design capacity is greater than twenty (20) percent of the seven (7) day, ten (10) year (Q70) low-flow of the receiving stream.

3. WWTPs which discharge into sinkholes or disappearing streams shall meet the requirements of a Grade One reliability category.

4. WWTPs which discharge within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area shall meet the requirements of a Grade One reliability category.

5. WWTPs which discharge to a waterbody designated in 401 KAR 6:300 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade Two reliability category if the average daily design capacity is equal to
or less than twenty (20) percent of the 70 Q low flow.
(6) Large WWTPs, which discharge within five (5) miles upstream of the head of an embayment where the lake is at normal pool elevation, shall meet the requirements of a Grade Two reliability category.
(7) Large WWTPs, shall, at a minimum, meet the requirements of a Grade Three reliability category.
(8) WWTPs which are subject to reliability requirements shall:
   (a) Provide sufficient units to allow for cleaning and repair without causing a violation of effluent limitations or interference from the sewer system or the WWTP. This shall require storage or treatment capability sufficient to contain or treat the volume of the largest tank and the flow resolved during the time needed to drain, clean, complete cleaning, and accomplish any anticipated repair without causing a permit violation or bypass of any treatment process; and
   (b) Provide alternate power from the connection of at least two independent power sources such as substations, an emergency generator, or comparable protection.

Section 14. Requirements for Trash Traps. A trash trap [trape] shall not be used on a WWTP (WWTPs) with a design capacity of larger than 100,000 gpd. A trash trap [trape] shall have an outlet baffle, be accessible to cleaning equipment, have air-tight access openings for cleaning, allow for cleaning in front of baffles, and have a volume required by this section.
(1) For a small WWTP (WWTPs), the trash trap volume shall be at least fifteen percent of the average daily design flow; and
(2) For an intermediate or large WWTP (WWTPs) with a design capacity of 100,000 gpd or less, the trash trap volume shall be as indicated in the following table for the appropriate WWTP capacity. For capacities not included, the volume shall be interpolated.

<table>
<thead>
<tr>
<th>WWTP Capacity (GPD)</th>
<th>Trash Trap Volume (Gallons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>1,500</td>
</tr>
<tr>
<td>20,000</td>
<td>2,400</td>
</tr>
<tr>
<td>30,000</td>
<td>2,500</td>
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<tr>
<td>40,000</td>
<td>3,200</td>
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<tr>
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<td>3,840</td>
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<tr>
<td>90,000</td>
<td>3,920</td>
</tr>
<tr>
<td>100,000</td>
<td>4,000</td>
</tr>
</tbody>
</table>

Section 15. Requirements for Slow Sand Filters. (1) Wastewater loading shall not exceed five (5) GPD per square foot of filter surface area.
(2) Filter areas larger than 900 square feet shall have multiple beds.
(3) The discharge piping on the filter bed shall be located so that the maximum lateral travel over the sand is less than twenty (20) feet.
(4) Each discharge point shall serve a maximum of 300 square feet of filter surface.
(5) Each discharge point shall have a splash block with a minimum surface area of nine (9) square feet and a square or circular shape.
(6) Distribution piping shall be designed to drain properly.
(7) An underdrain [underdraine] shall be spaced on ten (10) foot centers or less.
(8) Gravel shall be placed around the underdrain [underdraine] and to a depth of six (6) inches over the top of the underdrain [underdraine].
(9) The filter bed shall have at least thirty (30) inches of sand with an effective size between three-tenths (0.3) and five-tenths (0.5) millimeters.
(10) The dosing chamber shall have a volume sufficient to provide a depth of two (2) inches over the entire filter bed.

Section 16. Requirements for Rapid Sand or Mixed Media Filters.
(1) Rapid sand or mixed media filter loadings shall not exceed one (1) gallon per minute per square foot of filter surface area.
(2) If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot.
(3) A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) A flow equalization basin [basine] shall have:
   (a) A variable flow weir box set to deliver flow at a treatable rate;
   (b) A minimum of 1.25 cfm of diffused air per 1,000 gallons of flow equalization volume;
   (c) An emergency overflow to an appropriate point in the treatment scheme;
   (d) Sufficient volume to dampen the durnal flow variations;
   (2) [The site specific information or (red) similar flow pattern is not available, the flow equalization basin volume shall be based on the following formula:
   \[ V = \left(1 - \frac{t}{24}\right) \times Q \]
   Where:
   \( V \) is the required volume for the flow equalization basin;
   \( t \) is the number of hours flow is generated; and
   \( Q \) is the volume of flow anticipated to be received at the WWTP during a twenty-four (24) hour period.
   (3) A flow equalization basin [basine] with earth embankments shall be constructed with a slope not [not] steeper than 1:3 (one to three) unless a steeper slope is supported by geotechnical and slope stability studies.
   (4) For a flow equalization basin [basine] constructed in material other than earth, the applicant shall indicate how the basin will be properly sealed.

Section 18. Requirements for Wastewater Treatment Lagoons.
(1) BOD loading shall be less than:
   (a) Thirty-five (35) pounds per day per acre of lagoon surface for a non aerated primary lagoon system [systeme];
   (b) Fifty (50) pounds per day per acre of lagoon surface for a non aerated polishing lagoon [leaven][lagoon][Lagoon];
   (c) 150 pounds per day per acre of lagoon surface for an aerated lagoon [aerated lagoon][ aerated lagoon].
   (2) The lagoon design submittal shall provide details on the aeration system proposed including:
      1. The type, location, and capacity of the aeration units;
      2. The operating depth;
      3. The area of the lagoon at the operating depth;
      4. Permeability and thickness of the lagoon liner;
      5. Anticipated ultimate wastewater flow; and
      6. influent wastewater characteristics.
   (3) A new lagoon system [systeme] shall be designed to treat a raw wastewater BOD of at least 240 mg/l.
   (4) The lagoon design shall be evaluated by the method established [determined] in "[""Ten States' Standards", incorporated by reference in Section 29 of this administrative regulation,"] and the predicted BOD remaining shall be less than the required effluent concentration.
   (5) A lagoon [Lagoon] shall be at least 200 feet from any present or future residence or adjacent property line.
   (6) A non aerated primary lagoon [lagoon] shall have a minimum detention time of ninety (90) days.
   (7) The ""Ten States' Standards"" requirement for vegetation to be established prior to filling the lagoon shall not apply.
   (8) An applicant [Applicant] proposing the lagoon may approve a lagoon with an embankment slope steeper than 1:3 (one to three) if supported by geotechnical and slope stability studies to support the design.
   (9) The applicant shall indicate how a basin [basine] constructed in material other than earth will be properly sealed.

Section 19. Additional Requirements for WWTPs That Serve Schools. In addition to the requirements of Sections 10 through [to] 18 of this administrative regulation, the following requirements shall apply to a WWTP that serves a school [WWTPs which serve] [Schools].
(1) If a flow equalization basin is provided it shall meet the requirements of Section 17 of this administrative regulation;[1]
(2) The aeration tank shall have at least ten (10) gallons of capacity per day per student for elementary and middle schools, or at least twenty (20) gallons of capacity per day per student for an elementary or middle school, and a high school [high schools]; and

(3) The secondary clarifier shall be sized to provide a maximum surface loading of the average design flow, of 300 GPP per square foot of clarifier surface area. If a free flow equalization basin is not provided, the secondary clarifier shall be sized to provide a maximum surface loading of 100 GPP per square foot at average daily design flow.

Section 20. Additional Requirements for WWTPs That [Which] Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 through [18] of this administrative regulation, the [following] requirements in this section shall apply to a WWTP that serves a [WWTPs which serve] multifamily residential development [developments]. A multifamily residential development [developments] including subdivisions, condominiums, apartments, and mobile home parks shall provide one (1) or more of the following measures for additional reliability:

(1) Blowers and motors shall be installed sufficient to handle the organic load if the largest unit is not available for service;
(2) An alternate source of power; or
(3) Additional treatment units or processes.

Section 21. Additional Requirements for WWTPs That [Which] Propose Effluent Disposal by Spray Irrigation. In addition to the requirements of Sections 10 through [18] of this administrative regulation, the following requirements in this section shall apply to a WWTP that proposes [WWTPs which propose] effluent disposal by spray irrigation.

(1) One (1) acre of spray field shall be provided for each 1,000 GPP of treated wastewater. An applicant [Applicants] proposing higher application rates shall provide [may be approved if justified by:] a detailed design based on site-specific [site-specific] information.

(2) The following plans and specifications shall be signed, sealed, and dated by a professional engineer licensed in Kentucky:

(a) Plans for a WWTP with a design capacity of more than 1,000 gallons per day that propose an application rate greater than 1,000 gallons per acre per day; and

(b) Plans that propose a slope equal to or greater than ten [10] percent.

(3) A spray field that has a slope greater than twenty-five (25) percent on any portion of the spray field shall not be permitted.

(4) The soil of a spray irrigation field shall have an average saturated hydraulic conductivity of not less than ten-minutes (0.6) inches per hour, as established by:

(a) The saturated hydraulic conductivity value provided by an NRCS soil survey; or

(b) A saturated soil test of the spray field.

(5) The spray field shall have less than a six (6) percent slope unless:

(a) The average saturated hydraulic conductivity for the spray field is more than six (6) inches per hour; and

(b) The average soil depth of the spray field is at least twenty-four [24] inches.

(6) The spray irrigation field shall have sufficient vegetative growth to promote aeration, evaporation, and transpiration.

(a) Vegetative growth shall be perennial;

(b) Vegetative growth shall cover not less than ninety-five (95) percent of the spray field area;

(7) The spray field shall have less than a six (6) percent slope, have moderate to high soil permeability, and be covered with grass and the following non-vegetative growth to promote aeration, evaporation, and transpiration:

(a) A WWTP capable of meeting secondary treatment which meets the requirements of 401 KAR 5:046 and disinfection shall be provided prior to irrigation.

(4) A twenty (20) foot buffer zone shall be provided between the outer boundary of the spray field and the property boundary or the applicant shall provide screening to inhibit the transport of aerosols and windborne spray across property boundaries.

(5) A spray irrigation field for an individual residence shall have a temporal or physical barrier that inhibits human contact with the airborne spray.

(6) At least three (3) sprinkler heads;

(b) A spray area larger than 0.40 acre; and

(c) A barrier around the spray field;

(7) The spray irrigation field shall be located at least 200 feet from a nearest dwelling.

(8) Effluent from the spray irrigation field shall be contained on the owner's property.

(10) Setbacks.

(a) A construction permit shall not be issued if a portion of the spray field is closer than 200 feet from an existing dwelling.

(b) A portion of a spray field shall not be closer than the minimum setback requirements for a septic beds established in 902 KAR 10:085, Section 8.

(11) Effluent derived from a wastewater that contained human waste shall not be applied to an area in active production of food for human consumption.

(12) A spray irrigation field for an individual residence shall have the following additional requirements:

(a) At least three [3] sprinkler heads;

(b) A spray area larger than 0.19 acre; and

(c) A spray area larger than 0.38 acres if the slope is equal to or greater than [6] percent.

Section 22. Requirements for WWTPs that [which] Serve an Individual Residence. (1) A wastewater plant [plants] intended to serve an individual residence and eligible for a general KPDES permit pursuant to [under] 401 KAR 5:055 shall have, at minimum, the following processes:

(a) [Extended aeration, [WWTP]]

(b) Filtration,

(c) Disinfection.

(2) The WWTP shall be capable of meeting the final effluent limitations of the general permit.

(3) The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5:043 prior to filtration.

(4) The cabinet may allow an alternative or additional treatment process to extended aeration if an alternative process is necessary to meet the requirements of a general permit issued pursuant to 401 KAR 5:055.

(5)电影文件额外结构

(6) A minimum lot size of one (1) acre shall be provided for WWTPs located within a residential subdivision.

(7) At (8) WWTP serving an individual residence and proposing effluent disposal by spray irrigation shall also comply with Section 21 of this administrative regulation.

(7) Setback restrictions for a treatment system serving an individual residence shall not be less than the setback restrictions established by 902 KAR 10:085, Section 8, Table 7.

(8) An applicant may submit only one (1) of the three (3) copies of the plans and specifications [specifications] required pursuant to Section 6 of this administrative regulation.

Section 23. Additional Requirements for extended aeration WWTPs that [which] Serve Car Washes or Laundries. In addition to the requirements of Sections 10 to 18 of this administrative regulation, an extended aeration WWTP that serves commercial or fleet car washes [washers], commercial laundries [laundries], or laundry [laundries] serving commercial or institutional establishments, shall have an average daily flow from other biochemically degradable sources that is at least four (4) times greater than the anticipated flow of the car wash, commercial laundry, or laundry serving a commercial or institutional establishment.

Section 24. The Construction Permit. (1a) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned [Construction shall be completed within twelve (12) months unless additional time is requested].

(b) If construction is not commenced within the twenty-
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

[24]—twelve—(12) months following a permit's issuance, a new permit shall be obtained before construction may begin. The cabinet may allow a single twelve—(12) month extension to begin construction if the conditions have not changed.

(3)(a) The permittee shall submit the certification from the [engineer] that the facility was constructed in conformity with the plans and specifications approved by the cabinet in accordance with this administrative regulation within thirty (30) days from the completion of construction.

(b) The permittee shall certify the completion of construction[may submit the certification] for a project[projects] not designed by an engineer.[Failure to comply with the sub-]section may result in the denial of sewer line extensions to the incomplete facility.

(3) The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in section 20 of the administrative regulations, is submitted and the transfer of ownership is acknowledged by the cabinet.

(4) Permit conditions.

(a) Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and 401 KAR Chapter 4 through 11[administrative regulations—promulgated—pursuant thereto]. The conditions shall be in writing and treated as a part of the permit.

(b) The following conditions shall apply to all construction permits:

1. There shall not be [no] deviations from the plans and specifications submitted with the application or the conditions specified in this subsection, unless authorized by writing from the cabinet; and

2. The permittee shall ensure that the effluent is of satisfactory quality to prevent violations of the standards in 401 KAR Chapter 5 and 401 KAR Chapter 10. [3—When the construction of the system is completed, the owner shall submit a written certification to the cabinet that the facility has been constructed and tested in accordance with the approved plans and approval conditions. Failure to comply may result in penalty assessments or future approvals being withheld.]

(c) The following conditions shall also apply to a construction permit[permit] issued to a WWTP that discharges[WWTPs which discharge] to waters of the Commonwealth:

1. If violations of the standards of 401 KAR Chapter 5 result from the discharge of the treated effluent, the owner shall provide additional treatment or an extension of the effluent line.

2. When a permit is issued for a system and the facility becomes available, the WWTP shall be abandoned and the influent flow shall be diverted to the regional facility and

3. [2][The issuance of this permit shall[does] not relieve the permittee from the responsibility of obtaining[any] other permits or licenses required by this cabinet and other state, federal, or[and] local agencies.

4.[4][The construction permit for agricultural wastewater handling systems may be used as an interim operational permit until the operational permit is issued or denied.

5.[5][The issuance of a permit by the cabinet shall not convey any property rights of any kind or any exclusive privilege.

Section 25. Kentucky No Discharge Operational Permits (KNODOs). A Kentucky No Discharge Operational Permit (KNODP) shall only be issued to a facility that does not discharge and does not intend to[4]—Applicability. These permits are issued to facilities which do not discharge to waters of the Commonwealth, including agricultural wastewater handling systems and facilities that dispose of [waste] effluent by spray irrigation.

1. Nutrient Management Plans. An animal feedlot operation shall have a nutrient management plan consistent with the Agriculture Water Quality Act, KRS 224.71-100 through 224.71-145 and the NRCS Conservation Practice Standard Code 590 for Kentucky.

2. The plan shall, to the extent applicable, also address the following elements:

(a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(b) Ensure proper management of animal mortalities to ensure that they shall not be disposed of in liquid manure, storm water, or process wastewater storage or treatment system;

(c) Ensure that clean water shall be diverted from the production area;

(d) Prevent direct contact of confined animals with waters of the Commonwealth;

(e) Ensure that chemicals and other contaminants handled onsite shall not be disposed of in manure, litter, process wastewater, or storm water storage or treatment system, unless specifically designed to treat chemicals and other contaminants;

(f) Identify site-specific conservation practices to be implemented to control runoff of pollutants to waters of the Commonwealth;

(g) Identify protocols for testing of manure, litter, process wastewater, and soil;

(h) Establish protocols to [and apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure agricultural utilization of the nutrients in the manure, litter, or process wastewater; and]

(i) Identify records that shall be maintained to document the implementation and management of the minimum elements described in paragraphs (a) through (f) of this subsection.

(j) Additional Measures for Fencing Operations. A visual inspection. There shall be routine visual inspections of the production area. The following shall be visually inspected:

1. Weekly inspections of all storm water diversion devices, run off diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;

2. Daily Inspections [inspection] of drinking water or cooling water lines; and

3. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection shall note the level in liquid impoundments as indicated by the depth marker in paragraphs (b) of this subsection.

(k) Depth Marker. An open surface liquid impoundment shall have a depth marker that clearly indicates the storage capacity.

(l) Corrective Actions. A deficiency found as a result of an inspection shall be corrected.

(m) Mortality handling. A mortality shall not be disposed of in liquid manure or process wastewater system and shall be handled in a way that prevents the discharge of pollutants to surface water.

(n) Record Keeping Requirements for the Production Area. Each AFO shall maintain on-site records for a period of five (5) years from the date they are created, a complete copy of the information required by subsection (3)(c) of this section, and the records specified in paragraphs (a) through (f) of this subsection. The AFO shall make these records available to the cabinet for review upon request.

(o) Records documenting the inspections required pursuant to subsection (3)(a) of this section.

(p) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker pursuant to subsection (3)(b) of this section.

(q) Records documenting an action taken to correct deficiencies required pursuant to subsection (3)(c) of this section. Deficiencies not corrected within thirty (30) days shall be accompanied by an explanation of the factors preventing immediate correction.

(r) Records of mortalities management and practices used by the AFO to meet the requirements of subsection (3)(c) of this section.

(s) Records documenting the current design of manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.

(t) Records of the date, time, and estimated volume of any overflow.

(u) Fenced/keeping requirement for the land application areas.

(a) Each AFO shall maintain on-site a copy of its site-specific nutrient management plan.

(b) Each AFO shall maintain on-site for a period of five (5) years from the date it was created a complete copy of the informa-
Section 26. Kentucky InterSystem/Intermunicipal Operational Permits (KISOPs) (KIMOPs). A KISOP shall be [is] these permits are issued to publicly or privately owned sewer systems that [which] discharge to a WWTP or a sewer system that [which] is owned by another person.

(1) A KISOP (the permit) shall not apply to sewer systems with less than 5,000 linear feet of sewer line.

(2) A KISOP shall not apply to a sewer system that discharges to a POTW if the system is subject to a local permit pursuant to the pretreatment program established in 401 KAR 5.057.

(3) A KISOP shall be [is] issued to the applicant and the permittee shall remain the responsible party [for compliance with] the applicable statutes and administrative regulations until the [an] [an] a notarized [a] change in ownership certification [is incorporated by reference in Section 29 of this administrative regulation is submitted and the transfer of ownership is acknowledged by the cabinet.] (4) Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11 [Administrative regulations promulgated pursuant thereto].

The conditions shall be in writing and shall be treated as a part of the permit.

Section 27. Operational Permits. An operational permit [permit] required in Sections 25 and 26 of this administrative regulation shall be valid for five (5) years from the date of issuance and shall be renewed to maintain continuous operation.

(1) The operational [cabinet] permits may specify the type of monitoring or analysis required for a facility, and the frequency that the monitoring or analysis shall be performed and reported to the cabinet.

(2) The facility, including backup or auxiliary components, shall be operated and maintained in accordance with the permit requirements and the administrative regulation.

(3) The issuance of a permit by the cabinet shall not convey any property rights of any kind or any exclusive privilege.

Section 28. Transfer of Operating Permits. (1) An operating permit shall be issued to the applicant, and the permittee shall remain the responsible party for compliance with the permit until:

(a) A change in ownership certification is submitted by the new owner and the transfer of ownership is acknowledged by the cabinet;

(b) The current permittee has submitted a change in ownership certification and the transfer has been acknowledged by the cabinet.

(2) A change in ownership certification submitted by the current permittee without the signature of the new owner shall include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(3) A change in ownership certification shall serve as an application for a minor modification of the operating permit.

Section 29. Alternative Requirements. (1) The cabinet may approve alternative requirements to the provisions of Sections 7 to 23 of this administrative regulation based on the cabinet's best professional judgment that the alternative measure provides sufficient treatment or transport.

(2) The applicant shall demonstrate that an alternative [any alternative] requested by the applicant provides [provides] sufficient treatment or transport.

Section 30. Materials Documents. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Wastewater Facilities", 2006 (2002 Ed.), Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers. This document is also known as the "Ten States' Standards";

(b) "Water Policy Memorandum No. 84-02, Five Mile Limit Policy, signed by T. Michael Tamli, August 28, 1984", Facilities Construction Branch;

(c) "Construction Permit Application for Wastewater Treatment
fore, a CAFO cannot obtain the no-discharge permits referenced in Section 29(1)(h) and (i). The amendment of Section 2(1)(e) clarifies that KNDOP permits are for those facilities that do not discharge and do not intend to discharge. Section 2(1)(g) clarifies that Individual family residences for facilities including individual, businesses, and governmental organizations. Not all entities that have existing permits will be affected. Those affected will be entities that seek now or modified permits to construct wastewater facilities and entities that seek no-discharge operating permits. The amendment is expected to impact the following number of entities:

a. Individuals: 170 per year through construction permits for individual family residents
b. Businesses: Approximately 25 businesses per year are impacted by the construction permit requirements for new or expanded package treatment plants. Approximately 250 animal feeding operations are affected each year by construction permit requirements or operating permit requirements. The construction permit requirements for sewer-line-extension projects affect an
estimated 400 businesses each year. These estimates do not reflect the total number of applications because roughly 25% of businesses are expected to have multiple applications.

c. Organizations: 10 per year, primarily through construction permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs. These entities apply at a relatively small number of sewer line extensions and package treatment plant permits.

d. State or Local Government: Approximately 200 per year, primarily through construction permits for sewer line extensions. The construction permit requirements for new or expanded treatment facilities affect approximately 20 of these. The number of applications is larger than the number of affected entities due to multiple applications from the same governmental entity.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The regulated entities will have to submit a revised version of an application form that they currently submit. This amendment clarifies that those animal feeding operations requiring a permit shall submit a nutrient management plan as part of the permit application process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? None of the entities identified in question (3) are expected to incur an increased cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Individual family residence applicants will not be confused by potential inconsistencies between existing Health Department setbacks and the setback requirements of the Division of Water. Animal feeding operations will have an option in a no-discharge permit that is less costly than a discharge permit issued pursuant to the Clean Water Act. Animal feeding operations are expected to benefit from better protection of land and water as a result of this regulation.

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

(a) Initially: No additional cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding for this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment. This amendment requires no additional fees or funding for support.

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

(9) TIERING: Is tiering applied? Permit requirements and fees are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects wastewater treatment systems that discharge to waters of the Commonwealth or operate sewage systems. This administrative regulation affects all units of state or local government that have a KPDES discharge permit or a KNDDOP permit for wastewater.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100.

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

(a) How much will the state or local Government (including cities, counties, fire departments, or school districts) for the fiscal year? This amendment is not expected to generate additional state or local government revenue.

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

(c) How much will it cost to administer this program for the first year? The amendment is not expected to create any additional cost.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to create any 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:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:055. Scope and applicability of the KPDES Program.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes[s] provides that the Environmental and Public Protection cabinet to [may] require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes[s] provides that the cabinet to[may] issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251-1287(e-seq.) subject to the conditions imposed in 33 U.S.C. Section 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. Section 1342(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that which is more stringent than the effluent limitation, monitoring requirement or other condition that[which] would have been applicable under the federal regulation if the permit were issued by the federal government. KRS 224.16-050(5) [14(b)] requirements pertaining to exclusions and including specific inclusions and exclusions, prohibitions, [14(c)] requirements for general permits, [14(d)] requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application.

Section 1. Definitions. Definitions established in 40 C.F.R.
Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:
(a) A point source discharge identified in 40 C.F.R. 122, effective July 1, 2008;
(b) A concentrated animal feeding operation;
(c) A concentrated aquatic animal production facility;
(d) A discharge into aquaculture projects;
(e) A discharge from separate storm sewers; and
(f) A silviculture point source.
(2) A facility covered by a general permit issued pursuant to Section 2 of this administrative regulation, may be required to obtain an individual permit based on contributions to water pollution.
(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it.
(a) The discharger shall apply for a permit pursuant to 401 KAR 5:660 within sixty (60) days of notice, unless an extension is requested by the applicant.
(b) The question whether the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:675 and in a subsequent hearing pursuant to KRS 224:10-420(2).
(4)(a) Prior to a determination that an individual permit shall be required for a storm water discharge, the cabinet may require the discharger to submit a permit application and information regarding the nature of the discharge as established in 40 C.F.R. 122.21, effective July 1, 2008.

1. The provisions of the general permit are not sufficient to protect human health and the environment; or
2. The discharger has a history of noncompliance with the provisions of the general permit.
(3) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it.
(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant.
(d) The question whether the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:675 and in a subsequent hearing pursuant to KRS 224:10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:
(1) A discharge identified in 40 C.F.R. 122.3, effective July 1, 2008;
(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300n, and that are issued under a state or federal underground injection control program; and
(3) An underground injection control well that is permitted pursuant to 49 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters;
(4) Discharges that are regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.
University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.38(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R 122.38(a)(1)(v)." [Applicability of KPDES Requirements. The KPDES program shall require a permit to discharge pollutants from a point source into waters of the Commonwealth. Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5.065. Certain KPDES-related stormwater permits are replaced by the KPDES program. Failure to obtain a KPDES permit and shall not relieve a discharger of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated.]

(6) Discharges in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. Part 300 (The National Oil and Hazardous Substances-Pollution Contingency Plan) or 33 C.F.R. Part 153 (Pollution by Oil and Hazardous Substances), discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.01-100, or discharges authorized by state on-scene coordinators in response to release of hazardous substances, pollutants and contaminates or petroleum.

(7) Introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water runoff from ornamentals, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

(8) Return flows from irrigated agriculture.

(9) Discharges into a privately owned treatment works, except as the cabinet may otherwise require under 401 KAR 5.065, Section 2(12).

(10) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act (42 U.S.C. Sections 300f et seq.), and which are issued under a state or federal Underground Injection Control program, and underground injection and disposal wells which are permitted by the cabinet pursuant to 401 KAR Chapter 6.

(11) Discharges which are not regulated by the U.S. EPA under CWA Section 402, 33 U.S.C. Section 1342:

Section 2. Prohibitions. No permit shall be issued by the cabinet:

(1) If the conditions of the permit do not provide for compliance with the applicable requirements of KRS Chapter 224, or administrative regulations promulgated pursuant thereto;

(2) If the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 C.F.R. Section 125.44;

(3) If the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Kentucky and all affected states;

(4) If, in the judgment of the secretary of the U.S. Army, acting through the Chief of Engineers, storage and navigation in or on waters of the United States would be substantially impaired by the discharge, or shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R 122.38(a)(1)(v)."

(5) For the discharge of radiological, chemical, or biological warfare agent or high level radioactive waste;

(6) For the discharge inconsistent with a water quality management plan or plan amendment approved by EPA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Kentucky water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the KPDES administrative regulations and for which the cabinet has issued a permit to be discharges, shall demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining pollutant load allocations to allow for the discharge, and

(b) The existing dischargers into that segment are subject to schedules of compliance designed to bring the segment into compliance with Kentucky water quality standards. The cabinet may waive the submission of information by the new source or new discharger required by the subsection if the cabinet determines that the cabinet already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of the paragraph shall be included in the fact sheet to the permit under 401 KAR 5 075, Section 4.
Section 3—Variance Requests by Non-POTWs. A discharger which is not a publicly-owned treatment works (POTW) may request a variance from otherwise-applicable effluent limitations under the following statutory or regulatory provisions within the times specified in this section:

(a) Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guidelines were based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public-comment period under 401 KAR 6:075, Section 5;

(2) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than:

- July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated administrative regulations;

- 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. The request shall explain how the requirements of 401 KAR 6:075, Section 3, have been met.

(b) Nonconventional pollutants. A request for a variance from the requirements for "nonconventional" pollutants, pursuant to Section 7(1) of the administrative regulation because of the economic capability of the owner or operator, or pursuant to Section 7(2) of the administrative regulation because of certain environmental considerations, shall be made as follows: A nonconventional pollutant variance shall be available only for ammonia; chlorine; color; iron; total phosphorus (TDP); as determined by the U.S. EPA to be a pollutant-covered by CWA, Section 301(b)(2)(I); 33 U.S.C. 1314(h)(2)(I); and any other pollutant which the U.S. EPA lists under CWA Section 304(g)(4), U.S.C. 1311(h)(4).

The request shall be filed as follows:

(1) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

- Submitting an initial request to the cabinet stating the name of the discharger, the permit number, the outlet number, the applicable effluent guideline, and whether the discharger is requesting a modification under Section 7(1) or (2) of this administrative regulation or both Section 7(1) and (2) of this administrative regulation. The request shall be filed not later than:

- September 25, 1978, for a pollutant which is controlled by a BAT- or BAT-equivalent limitation guideline promulgated before December 27, 1977; or

- 90-180 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 17, 1977, and

- Submitting a completed request no later than the close of the public-comment period under 401 KAR 6:075, Section 5 demonstrating that the requirements of 401 KAR 6:075, Section 8 and the applicable requirements of 401 KAR 6:080 have been met. Notwithstanding this provision, the complete application for a request under Section 7(2) of this administrative regulation shall be filed 180 days before the decision is decided.

(b) For those requests for a variance from effluent limitation guidelines, the request need only comply with paragraph (a)(2) of this subsection and need not be preceded by an initial request under paragraph (a)(1) of this subsection.

(2) Delay in construction of POTW. An extension under CWA Section 301(2), 33 U.S.C. 1311(2) of the statutory deadlines in Section 301(b)(1)(A) or (b)(1)(C) of the CWA, 33 U.S.C. 1311(b)(1)(A) or (C) based on delay in completion of a POTW into which the source is to discharge shall have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested extension under 40 C.F.R. 122.21(n)(8) whichever is later.

(4) Innovative technology. An extension under Section 7(3) of this administrative regulation from the deadlines in 401 KAR 6:080, Section 1, for best available technology (BAT) or for best conventional pollutant control technology (BCT), based on the use of innovative technology, shall be requested no later than the close of the public-comment period under 401 KAR 6:075, Section 5, for the discharger's initial permit requiring compliance with applicable effluent limitations. The request shall demonstrate that the requirements of 401 KAR 6:080 have been met.

Section 4—Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in Section 3 of this administrative regulation, the cabinet may notify a permit applicant before a draft permit is issued under 401 KAR 6:075, Section 3, that the draft permit will likely contain limitations which are eligible for variance.

The notice to the cabinet may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 401 KAR 6:080 applicable to the variance have been met. The cabinet may require a submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which shall become effective upon final grant of the variance.

A discharger who cannot file a complete request required under Section 3(2) of this administrative regulation may request an extension. The extension may be granted or denied by the cabinet. Extensions shall not be more than sixty (60) months in duration.

Section 5—General Permits. (1) Coverage. The cabinet shall issue a general permit in accordance with the following:

(a) Area. The general permit shall be written to cover one (1) or more categories or subcategories of discharges described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

- Designated planning areas under CWA Sections 308 and 303, 33 U.S.C. 1288 and 1342;

- City, county, or state political boundaries;

- State highway systems;

- Standard metropolitan statistical areas as defined by the University of Louisville- Urban Studies Center, consistent with the U.S. Office of Management and Budget;

- Urbanized areas as designated by the University of Louisville-Urban Studies Center consistent with the U.S. Bureau of the Census;

- Other appropriate division or combination of boundaries.

(b) Source. The general permit shall be written to regulate within the area described in paragraph (a) of this subsection, either:

- Storm-water point sources; or

- One (1) or more categories or subcategories of point sources other than storm-water point sources, or one (1) or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory are:

- Involves the same or substantially similar types of operations;

- Discharge the same types of wastes;

- Have the same effluent limitations or operating conditions;

- Are subject to a similar monitoring and evaluation program;

- Have the same or similar categorical or subcategorization.

(c) Water-quality-based limits. If sources within a specific category or subcategory of discharges are subject to water-quality-based limits imposed under Section 301 of CWA, 33 U.S.C. 1311, and 401 KAR 6:066, Section 2(4), the source in that specific category or subcategory shall be subject to the same water-quality-based effluent limitations.

(d) Other requirements.
2. The general permit may exclude specified sources or areas from coverage.

(2) Administration.

(a) General permits shall be issued, modified, revoked, and rescinded, or revoked in accordance with applicable requirements of 401-KAR 6:075.

(b) Issuance of an Individual Permit.

1. The cabinet may require any person authorized to discharge by a general permit to apply for and obtain an individual KPDES permit. Interested person may petition the cabinet to take action under this paragraph. An individual KPDES permit may be required if:

a. The discharger is not in compliance with the conditions of the general KPDES permit;

b. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

c. Effluent limitations guidelines are promulgated for point sources covered by the general KPDES permit;

d. A Kentucky Water Quality Management Plan containing requirements applicable to those point sources is approved as or

The requirements of subsection (1) of this section are not met.

2. An owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401-KAR 5:080, Section 1, to the cabinet with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401-KAR 6:075, Section 5. The request shall be processed under 401-KAR 6:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.

3. If an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permit is automatically revoked on the effective date of the individual permit.

4. A permittee, excluded from a general permit solely because the permittee already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Section 6. Disposal of Pollutants Into Wells, into POTWs or by Land Application.

(1) The cabinet may issue permits to control the disposal of pollutants into wells, if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

(2) If part of the dischargeable process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit shall be adjusted to reflect the reduced raw waste resulting from the disposal. Effluent limitations and standards in the permit shall be calculated by one or more of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and applicable effluent limitations guidelines do not provide separate allocation for waste from that process, all allocatons for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater new to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards calculated may be further adjusted under 401-KAR 6:080, Section 3, to make them more stringent if it discharges to wells publicly owned treatment works, or by land application, change the character or treatability of the pollutants being discharged to receiving waters. This method shall be algebraically represented as:

When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.

(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentration of pollutants discharged but not mass.

(b) Specify a different specific technique for adjusting effluent limitations to account for well-infection, land application, or disposal into POTWs.

(4) Subsection (2) of this section does not alter a discharger's obligation to meet more stringent requirements established under 401-KAR 6:080.

Section 7. Vanacare Available to KPDES Applicants. Consistent with KRS 224.180-205, the variance provisions in this section and in 401-KAR 6:080, Sections 3 and 4, shall, inclusively, those variances available to KPDES applicants.

(1) Economic capability. The cabinet, with the concurrence of EPA, may modify the BAT requirements established under 401-KAR 6:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the cabinet that the modified requirement will:

(a) Represent the maximum use of technology within the economic capability of the owner or operator; and

(b) Result in reasonable and further progress toward the elimination of the discharge of pollutants.

(2) Environmental considerations.

(a) The cabinet, with the concurrence of EPA, may modify the BAT requirement set out in 401-KAR 6:080, Section 1, for a point source which does not discharge toxic pollutants identified in 401-KAR 6:080, Section 6, conventional pollutants, or the thermal components of that discharge upon a showing by the owner or operator satisfactory to the cabinet that:

1. The modified requirement shall result, at a minimum, in compliance with the BPT requirement identified in 401-KAR 5:080 or Kentucky water quality standards, whichever is applicable;

2. The modified requirement shall not result in any additional requirement on any other point or nonpoint source; and

3. The modification shall not:

a. Interfere with the attainment or maintenance of that water quality which will assure protection of public water supplies, protection and propagation of a balanced population of fish, and wildlife and the use and enjoyment of navigable or other waters;

b. Result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity, or teratogenicity, or synergistic properties;

(c) If an owner or operator of a point source applies for a modification under the section for a pollutant that owner or operator shall be eligible to apply for a modification under subsection (1) of this section with respect to that pollutant only during the same time period as he is eligible to apply for a modification under this section.

(2) Innovative Technology.

(a) The cabinet shall establish a date for complying with the deadline for achieving BAT set out in 401-KAR 6:080, Section 1, no later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable, if the owner or operator establishes the satisfaction of the cabinet the following:

1. That the existing production capacity of the facility will be replaced with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to that facility, and which moves toward the ultimate goal of eliminating the discharge of all pollutants;

2. That an innovative control technique will be installed which has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limi-
tation, and which moves toward the state's goal of eliminating the discharge of all pollutants.

3. That an innovative system will be installed which has the potential for significant improvements in the system which has been determined by the cabinet to be economically achievable.

(b) The innovative system shall have the potential for industry-wide application.

(a) The cabinet shall not modify any requirement under this section which applies to a pollutant on the toxic pollutant list set out at 401 KAR 5 050, Section 6.

3. The cabinet may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable compliance date is granted:

A. Requirement that the discharger report annually on the installation, operation, and maintenance of the innovative technology.

2. Alternative BAT limitations that the discharger shall meet as soon as possible and not later than two (2) years after the date of compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

4. Thermal pollution.

(a) The cabinet may impose an alternative effluent limitation for the thermal component of a discharge from a point source if the owner or operator can establish to the satisfaction of the cabinet that the effluent limitations for the discharge of the contaminants listed in (b) of this section do not apply to the thermal component of the discharge.

(b) The alternative effluent limitation imposed by the cabinet shall require the owner or operator to reduce the temperature of the discharge by at least ten degrees on the temperature of water entering the point source.

Section 8. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying during normal business hours of 8:00 a.m. to 4:00 p.m., except for state holidays, at the Division of Water, 14 Rollinas Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.

(1) 33 C.F.R. Part 150, "Pollution by Oil and Hazardous Substances," as in effect on July 1, 2001, for the description of emergency discharges exempt from KDDES permit requirements.

(2) 40 C.F.R. 122.21(n)(3), "Permit Compliance Extensions allowed for delays in construction of POTW," as in effect on July 1, 2001, for permit extensions as referenced in Section 2(2) of this administrative regulation, and

(3) 40 C.F.R. Part 300, "The National Oil and Hazardous Substances Pollution Contingency Plan," as in effect on July 1, 2001, for the description of emergency dischargers exempt from KDDES permit requirements.

HENRY C.A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 a.m.

CONTACT PERSON: Abigail Perrell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the scope and applicability of the KDDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treat works (POTWs) and disposal by land application.

(b) The necessity of this administrative regulation: KRS 224.16-050 (1) requires that any exemptions granted in the issuance of those permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1257.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific bounds for the scope of the KDDES program.

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

(a) How the amendment will change this existing administrative regulation: This amendment will clarify that the cabinet may develop effluent limitations for the discharge of pollutants to the Clean Water Act developed by Interstate agencies. This amendment also revises ambiguous terms in accordance with KRS Chapter 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. Amendment were made after comments to insert effective dates for each of the citations to federal regulations and to explicitly exclude discharges that are not regulated under the Clean Water Act from the applicability of this regulation.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to clarify a debate of the legal requirement of including limitations developed by an interstate agency. This amendment makes it clear that such limitations are required.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-050, which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment also conforms to KRS 224.18-100, which authorizes interstate environmental compacts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies that the cabinet has authority to impose permit requirement developed pursuant to an interstate agency standards amendment only if the cabinet is in compliance with the goals of KRS Chapter 224. The cabinet also believes that citing federal regulations will allow future federal changes to regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KDDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: 100 per year for new permit issuances under the individual family residence permit. Renewal of these permits would average 300 per year. However, renewals of general permits occur as a batch once every five years.

b. Businesses: 1600 per year, primarily through industrial permits, nonpublic entry sanitary wastewater permits, and stormwater coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to comply with permit conditions and limitations that are pursuant to the standards of interstate agencies. The change should cause very little additional impact. The cabinet's requirements are typically as stringent as those of the existing interstate agency (ORSANCO).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) should have an increased cost due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Regulated entities will not be confused by potential authority gaps arising between state and federal regulations as applied in interstate waters.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.

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

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

(9) TIERING: Is tiering applied? This administrative regulation provides tiered requirements through the identification of classes of industrial users, specific requirements of POTW, and requirements specific to categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This regulation affects all units of state or local government that generate wastewater. KPDDES states a proposed amendment affects only those that discharge into waters of the Commonwealth. The proposed amendment affects only those who discharge into waters of the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS 224

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no change in cost.

(d) How much will it cost to administer this program for subsequent years? There will be no change in 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.

2. State compliance standards. KRS 224.16-050.

3. Minimum or uniform standards contained in the federal mandates. The federal standard requires that public states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandates? No, the amendment to this regulation will not apply stricter standards than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 RELAR 5:060. KPDDES application requirements.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [Environmental and Public Protection] cabinet to issue, continue in effect, revoke, modify, suspend, or deny [under such conditions as the cabinet may prescribe,] permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes [further empower] the cabinet to issue federal permits pursuant to 33 U.S.C.[Section] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C.[Section] 1251-1387[et seq.], subject to the conditions established [imposed] in 33 U.S.C.[Section] 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, EO 2008-507 and 2008-531, effective June 16, 2008, abolishing the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. The administrative regulation establishes[sets forth] the application requirements for a KPDDES.
Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an existing permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055. 

(2) Duty to apply. 

(a) A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses (a) through (c) of this subparagraph. 

b. A person covered pursuant to general permits as established in 40 C.F.R. 122.28, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008. 

c. A person discharging to a POTW as established in 40 C.F.R. 122.3, effective July 1, 2008 unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2008. 

d. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2008. 

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44(k), effective July 1, 2008. 

(b) An applicant shall submit the appropriate application form, as established in Table 1 of this paragraph.

<table>
<thead>
<tr>
<th>Discharge Type</th>
<th>Required Application Form</th>
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</thead>
<tbody>
<tr>
<td>POTW</td>
<td>1 and A</td>
</tr>
<tr>
<td>CAFO</td>
<td>1 and B</td>
</tr>
<tr>
<td>Aquatic Animal Production Facility</td>
<td>1 and B</td>
</tr>
<tr>
<td>Manufactured commercial, mining and silvicultural discharges with process water</td>
<td>1 and C</td>
</tr>
<tr>
<td>Manufactured commercial, mining and silvicultural discharges with nonprocess wastewater only</td>
<td>1 and SC</td>
</tr>
<tr>
<td>Industrial stormwater point source discharges</td>
<td>1 and F</td>
</tr>
</tbody>
</table>

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.3, effective July 1, 2008 as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008 and the modifications, exceptions, and additions of Section 11 of this administrative regulation. 

(4) Continuation of expiring permits shall be as established in 40 C.F.R. 122.4, effective July 1, 2008. 

(5) An animal feeding operation may submit Form NDCAFO to satisfy the voluntary certification of no-discharge pursuant to 40 C.F.R. 122.23(h), effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008.

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of any legal document for service of process. 

(2) The last address provided to the cabinet pursuant to this section shall be the address at which the cabinet shall tender any legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22, effective July 1, 2008.

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008.

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for modification pursuant to the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.35, as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008.

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been made in accordance with the requirements established in 40 C.F.R. 122.42(a)(10), as amended in the Federal Register, Volume 73, Number 225 P70484, November 20, 2008 shall be a minor modification as established in 40 C.F.R. 122.63, as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008.

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24, effective July 1, 2008.

Section 7. Concentrated Aquatic Animal Projects. Discharges into an aquatic animal project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25, effective July 1, 2008.

Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26, effective July 1, 2008.

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27, effective July 1, 2008.

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30, effective July 1, 2008.

(2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32, effective July 1, 2008.

(3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33, effective July 1, 2008.

(4) The permit for a small MS4 shall contain the conditions established in 40 C.F.R. 122.34, effective July 1, 2008.

(5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35, effective July 1, 2008.

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer [cabinet has delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet].

(3) KPDES" shall be substituted for "KPDES" if the authority to administer [cabinet has delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet].

(4) The term "applicable" as used in Section 12(10)(14)(i) of this administrative regulation shall be substituted for the federal term as established in 40 C.F.R. 122.21, effective July 1, 2008.

(5) (a) "Feast-cool" shall be modified to "cool" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(b) The conditions for Feat-cool shall be modified to "cool" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(c) The conditions for Cooling Water Phase II established in
<table>
<thead>
<tr>
<th>DISCHARGE TYPE</th>
<th>APPLICATION FORMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>POTWs</td>
<td>1 and A</td>
</tr>
<tr>
<td>Concentrated animal feeding operations and aquaculture animal production facilities</td>
<td>1 and B</td>
</tr>
<tr>
<td>Manufacturing, commercial, mining and silvicultural activities—wastewater</td>
<td>1 and C</td>
</tr>
<tr>
<td>Manufacturing, commercial, mining and silvicultural activities—non-wastewater</td>
<td>1 and Short C</td>
</tr>
<tr>
<td>Industrial storm water point source discharge</td>
<td>1 and F</td>
</tr>
</tbody>
</table>

(3) If a facility or activity is owned by one (1) person but is operated by another person, the operator shall obtain a permit.

(4) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless a commitment or letter of intent to do a later date has been granted by the cabinet. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities with storm water runoff from compound activities as defined in 401 KAR 5.002—Section 4—shall submit applications at least ninety (90) days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the ninety (90) or 180-day requirements to avoid delay. See also Section 12(2)(a)(4) and (2)(e)(4) of this administrative regulation.

(5) Duty to respond.
(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the cabinet. The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit.
(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the cabinet may grant permission to submit an application later than the deadline for submission otherwise applicable, but the new deadline shall not be later than the permit expiration date.
(c) Separation of expiring permits.
(1) The conditions of an expired permit shall continue in force until the effective date of a new permit if:
(a) The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit and
(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5.075, Section 3(1), on or before the expiration date of the previous permit.

(6) Application fee. Permits continued under the paragraph shall remain effective and enforceable until the effective date of a new permit.

3. Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet may do any of the following:
(a) Issue an enforcement action based upon the permit which has been issued;
(b) Issue a notice of intent to deny the new permit under 401 KAR 5.075, Section 3(2);
c) Issue a new permit under 401 KAR 5.076 with appropriate conditions; or
(d) Take other actions authorized by KRS Chapter 224 and 401 KAR Chapter 6.

(7) Information requirements. All applicants for KDDES permits shall provide the following information to the cabinet, using the application form—provided by the cabinet. Additional information required of applicants is set forth in Sections 2 through 5 of this administrative regulation:
(a) The activities conducted by the applicant which require it to obtain a KDDES permit.
(b) Name, mailing address, and location of the facility for which the application is submitted.
(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.
(d) The owner’s or operator’s name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.
(e) A listing of all existing environmental permits.
(f) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment storage, and disposal facilities; each well from the facility is injected underground, and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.
(g) A brief description of the nature of the business.

(8) KDDES permit fees. As provided for in KRS 224.70-120,
outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraph (f) and (g) of this subsection that an applicant shall provide-quantitative data for certain pollutants known to be present shall not apply to pollutants present in a discharge solely as the result of their presence in-stake water. An applicant shall report those pollutants as present. Grab samples shall be used for pH, temperature, cyanide, total phosphorus, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, twenty-four (24) hour composite samples shall be used. A minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. In addition, for discharge other than storm water discharge, the cabinet may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automated sampler is not feasible and that the minimum of four (4) grab samples shall be a representative sample of the effluent being discharged. For storm water discharge, all samples shall be collected from the discharge resulting from a storm event that is greater than one-on-tenth of (0.1) inch and at least seventy-two (72) hours from the previously measurable (greater than one-on-tenth of (0.1) inch rainfall) storm event. If feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty (50) percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the discharge or the first three (3) hours of the discharge. The flow weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. Applicants submitting permit applications for storm water discharges under Section 12(2)(c) of this administrative regulation may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the cabinet. A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data shall be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Section 12(2)(c) of this administrative regulation. For all storm water permit applicants taking flow-weighted composite samples, the report shall be for all pollutants specified in Section 12 of this administrative regulation except pH, temperature, cyanide, total phosphorus, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The cabinet may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snowmelt or rainfall), protocols for collecting samples under 40 C.F.R. Part 136, and additional time for submitting data on a case-by-case basis. An applicant knows or has reason to know that a pollutant is present in an effluent based on any evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be exposed to be present in contaminated storm water runoff from the facility.
vidual point sources, or for a particular industry category or one or more of the pollutants listed in subparagraph a of this paragraph.

(c) Each applicant with processes or one or more of the following primary industry categories contributing to a discharge shall report qualitative data for the following pollutants in each outfall-containing process wastewater:

1. Adhesives and sealants.
2. Aluminum forming.
3. Auto and other automotive.
5. Coal mining.
6. Cola coating.
7. Copper forming.
8. Electrical and electronic components.
10. Explosives manufacturing.
11. Foundries.
12. Gum and wood chemicals.
15. Leather tanning and finishing.
20. Paint and ink formulation.
22. Petroleum refining.
23. Pharmaceutical preparations.
24. Photographic equipment and supplies.
25. Plastics processing.
27. Porcelain enameling.
28. Printing and publishing.
29. Pulp and paper mills.
30. Rubber processing.
31. Soap and detergent manufacturing.
32. Steam-electric power plants.
33. Textile mills.
34. Timber products processing.

(d) Analytical results for the organic toxic pollutants in the fractions designated in Section 8(1) of this administrative regulation for the applicant’s industrial category or categories shall be provided unless the applicant qualifies as a small business under subsection (b) of this section. Section 8(2) of this administrative regulation lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography and mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing shall not be conclusive as to the applicant’s inclusion in that category for any other purposes.

(e) Analytical results for the pollutants listed in Section 8(2) of this administrative regulation (the toxic metals, cyanide, and total phenols) shall be provided.

(f) Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(4) of this administrative regulation (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guidance either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant shall report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guidance, the applicant shall either report quantitative data or briefly describe the reason the pollutant is expected to be discharged.

(g) Each applicant shall describe the reasons the pollutant is expected to be discharged in concentrations of ion (10 ppm or greater, the applicant shall report quantitative data. For acrylonitrile, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol. If any of these four pollutants are expected to be discharged in concentrations of 100 ppm or greater, the applicant shall report quantitative data. For every pollutant expected to be discharged in concentrations less than 100 ppm, the applicant shall either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (8) of this section shall not be required to analyze for pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants).

(h) Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(5) of this administrative regulation (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(i) Each applicant shall report qualitative data generated using a screening procedure calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,6-trichlorophenol—phenoic acid (2,4,6-TCP) or 2,4,6-trichlorophenol—phenolic acid (2,4,6-TCPP) or 2,4,6-trichlorophenol—ethylphenolic acid (2,4,6-TCPH) or 2,4,6-trichlorophenol—phenoic acid (2,4,6-TCP) or 2,4,6-trichlorophenol—naphthochromic acid (2,4,6-TCP).

(j) Small business exemptions. An applicant which qualifies as a small business under one of the following criteria shall be exempt from the requirements in subsection (8)(b) or (c) of this section. The pollutants shall be the pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants):

(1) For oil refineries, a base oil or fuel oil sales and marketing exceeding $500,000 per ton.

(2) For all other applicants, a gross total annual sale or average gross of less than $100,000 per year (in second quarter of $100,000)

(k) Use of test methods. A listing of any toxic pollutant which the applicant currently uses in manufacturing and uses as an intermediate or final product or byproduct shall be provided. The cabinet may waive or modify the requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the cabinet has adequate information to license the permit.

(l) Biological toxicity tests. An identification of any biological toxicity tests which the applicant knows or has reason to know have been made within the last three (3) years on any of the applicant's discharges or on receiving water in relation to a discharge shall be provided.

(m) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this section, the identity of each laboratory or firm and the analyses performed shall be provided.

(n) Additional information. In addition to the information reported on the application form, the applicant shall provide to the cabinet, at its request, other information as the cabinet may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDDES permit. The additional information may include additional qualitative data and bioscience to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

Section 3—Application Requirements for Manufacturing, Commercial, Mining, and Miscellaneous Facilities, which Discharge Only Nonprocess Wastewater. Except for storm-water discharges, all manufacturing, commercial, mining, and miscellaneous facilities applying for KPDDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source-performance standard shall provide the following information to the cabinet, using application forms provided by the cabinet.
(1) Outfall location; outfall number, latitude and longitude to the nearest fifteen (15) seconds, and the name of the receiving water.

(2) Discharge date for non-dischargers: Date of expected commencement of discharge.

(3) Type of discharge: Identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact-cooling water. An identification of cooling water additive, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available.

(4) Effluent characteristics:
(a) The applicant shall provide quantitative data for the pollutants or parameters listed in subparagraphs 1 through 11 of this paragraph, unless testing is waived by the cabinet. The quantitative data may be collected over the past 365 days, if they remain representative of current operations, and shall include minimum daily, average daily, and number-of-measurements taken. The applicant shall collect and analyze samples in accordance with 40 C.F.R. Part 136. Grab samples shall be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. New dischargers shall include estimates for the pollutants or parameters listed in subparagraphs 1 through 11 of this paragraph instead of actual sampling data, along with the source of each estimate. All levels shall be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

1. Biochemical oxygen demand (BOD).
2. Total suspended solids (TSS).
3. Fecal coliform, if known to be present or if sanitary waste is or will be discharged.
4. Total residual chlorine, if chlorine is used.
5. Oil and grease.
6. Chemical oxygen demand (COD), if noncontact-cooling water is or will be discharged.
7. Total organic carbon (TOC), if noncontact-cooling water is or will be discharged.
8. Ammonia, as N.
10. pH.
11. Temperature, winter and summer.

(b) The cabinet may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (a) of this subsection if the applicant submits a request for a waiver before or with the application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(c) The requirements of paragraph (a) of this subsection that an applicant shall provide quantitative data or estimates of certain pollutants shall not apply to pollutants present in a discharge solely as a result of their presence in intake water. An applicant shall report these pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 401 KAR 5-066, Section 3(7) are met.

(5) Flow: A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm-water runoff, leaks, or spills.

(6) Treatment system: A brief description of any system used or to be used.

(7) Optional information: Any additional information that the applicant wishes to be considered, such as incidental data for the purpose of obtaining net credits pursuant to 401 KAR 6-065, Section 3(7).

(8) Certification: Signature of certifying official under subsection 9 of this administrative regulation.

Section 4 Application requirements for concentrated animal feeding operations and aquaculture production facilities

Concentrated animal feeding operations and concentrated aquaculture animal production facilities shall provide the following information to the cabinet, using the applicable application form provided by the cabinet:

(1) For concentrated animal feeding operations:

(a) The type and number of animals in on-confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and collection system, if one (1) exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(d) For concentrated aquatic animal production facilities:

(a) The maximum daily and average monthly flow rate from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the sources of intake water.

(d) For each species of aquatic animals, the total year-round and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of feed fed during that month.

Section 5 Application requirements for new and existing PSWPs All PSWPs shall provide at minimum, the information in this section to the cabinet, using KPDES Form A provided by the cabinet. Permit applicants shall submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the cabinet. The cabinet may waive any requirement of the paragraph if it has access to substantially identical information. The cabinet may also waive any requirement of this paragraph that is not of material concern to a specific permit, if approved by the regional administrator. The waiver shall be provided in the application, unless the regional administrator shall issue the certificate of correction for the waiver. A regional administrator's deactivation of the certificate proposed waiver shall not constitute final agency action, except it shall provide notice to the cabinet and permit applicant(s) that EPA may object to any cabinet-issued permit issued in the absence of the required information.

(1) Basic application information: All applicants shall provide the following information:

(a) Facility information. Name, mailing address, and location of the facility for which the application is submitted.

(b) Applicant information. Name, mailing address, and telephone number of the applicant, and an indication as to whether the applicant is the facility's owner, operator, or both.

(c) Existing environmental permits. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:


3. KPDES program pursuant to KRS Chapter 224.

4. Prevention of Significant Deterioration (PSD) program under the Clean Air Act, 42 U.S.C. 7407 to 7492.

5. Nonattainment program under the Clean Air Act, 42 U.S.C. 7601 to 7615.


9. Other related environmental permits.

(d) Population: The name and population of each municipal entity served by the facility, including unincorporated connector districts. Whether or not each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined-estimation sanitary, if known, shall be indicated.

(e) Flow rate: The facility's design flow rate (the wastewater flow rate at the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years.

(f) Collection system: Identification of type of collection system, used by the treatment works (i.e., separate sanitary sewer or combined-estimation sanitary sewer) and an estimate of the
percent of sewer line that each type comprises; and
(g) Outfalls—other discharge or disposal methods. The following information shall be provided for outfalls into the Commonwealth:
1. For effluent discharged to waters of the Commonwealth, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);
2. For wastewater discharged to surface impoundments:
   a. Location of each surface impoundment;
   b. Average daily volume discharged to each surface impoundment; and
   c. Whether the discharge is continuous or intermittent;
3. For wastewater applied to the land:
   a. Location of each land application site;
   b. Size of each land application site, in acres;
   c. Average daily volume applied to each land application site, in gallons per day; and
   d. Whether land application is continuous or intermittent;
4. For effluent sent to another facility for treatment prior to discharge:
   a. Means by which the effluent is transported;
   b. Name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;
   c. Name, mailing address, contact person, phone number, and KPDES permit number, if any, of the receiving facility; and
   d. Average daily flow rate from the receiving facility to the receiving facility in millions of gallons per day; and
5. For wastewater disposed of in a manner not included in subparagraphs 1 through 4 of this paragraph (e.g., underground septic systems, underground injection):
   a. Description of the disposal method, including the location and size of each disposal site, if applicable;
   b. Annual average daily volume disposed of by this method, in gallons per day; and
   c. Whether disposal through this method is continuous or intermittent;
(2) Additional Information. All applicants, with a design flow greater than or equal to one-tenth (0.1) mgd shall provide the following information:
(a) Inflow and Infiltration. The current average daily volume of inflow and infiltration, in gallons per day, and the facility is taking to minimize inflow and infiltration;
(b) Topographic map. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant, including all unit processes and showing:
   1. Treatment plant area and unit processes;
   2. The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Outfalls from bypass piping, if applicable, shall be included;
   3. Each well where fluids from the treatment plant are injected underground;
   4. Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one quarter (1/4) mile of the property boundaries of the treatment plant;
   5. Sewage sludge management facilities, including on-site storage, and disposal sites; and
   6. Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;
(c) Process flow diagram or schematic:
1. A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancies in the system. The shall include a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and
2. A narrative description of the diagram, and
(d) Scheduled improvements, schedules of implementation. The following information shall be provided for the following:
1. The number of each outfall affected;
2. A description of each required improvement; and
3. A schedule of actual dates of completion for the following:
   a. Commencement of construction;
   b. Completion of construction;
   c. Commencement of discharge; and
   d. Attainment of operational level; and
4. A description of permits and clearances concerning other federal and state requirements;
5. Information on effluent discharge. Each applicant shall provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:
   (a) Description of outfall. The following information about each outfall:
      1. Outfall number;
      2. State, county, and city in which outfall is located;
      3. Latitude and longitude, to the nearest second;
      4. Distance from shore and depth below surface;
      5. Daily flow rate, in millions of gallons per day;
      6. The following information for each outfall with a seasonal or periodic discharge:
         a. Number of times per year the discharge occurs;
         b. Duration of each discharge;
         c. Flow of each discharge;
         d. Months in which discharge occurs; and
      7. Whether the outfall is equipped with a diffuser and the type (e.g., high rate) of diffuser used;
   (b) Description of receiving waters. The following information, if known, for each outfall through which effluent is discharged to waters of the Commonwealth:
      1. Name of receiving water;
      2. Name of watershed or river or stream system and the United States Soil Conservation Service fourteen (14) digit watershed code;
      3. Name of the State Management River Basin and United States Geological Survey eight (8) digit hydrologic cataloging unit code; and
   (c) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);
   (d) Description of treatment. The following information describing the treatment provided for discharges from each outfall to waters of the Commonwealth:
      1. The highest level of treatment (e.g., primary, secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
         a. Design biochemical oxygen demand (BODs or CBODs) removal percent;
         b. Design suspended solids (SS) removal percent; and, if applicable,
         e. Design phosphorus (P) removal percent;
         d. Design nitrogen (N) removal percent, and
         e. Any other removals that an advanced treatment system is designed to achieve;
      2. A description of the type of disinfection used, and whether the treatment plant disinfects (i.e., disinfection is accomplished through chlorination);
   (4) Effluent monitoring for spoilage parameters:
   (a) As provided in paragraphs (b) through (j) of this subsection, all applicants shall submit to the cabinet effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the Commonwealth, except for CSOs. The cabinet may allow applicants to submit sampling data for only one (1) outfall on a case-by-case basis, if the applicant has two or more outfalls with substantially identical effluent. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing zone;
   (b) All applicants shall sample and analyze for the pollutants listed in Table VI in Section 8(B) of this administrative regulation;
   (c) All applicants with a design flow greater than or equal to one-tenth (0.1) mgd shall sample and analyze for the pollutants listed in Table VII in Section 8(C) of this administrative regulation;
   (d) The following information shall be provided for each outfall:
      1. The number of each outfall affected;
      2. A description of each required improvement; and
      3. A schedule of actual dates of completion for the following:
regulation, and for any other pollutants for which the cabinet or EPA have established water quality standards applicable to the receiving waters;
(2) All POTWs with a design-flow rate equal to or greater than 1,000,000 gallons per day;
(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
(3) Other POTWs, as required by the cabinet;
(a) The cabinet may require sampling for additional pollutants, as appropriate, on a case-by-case basis;
(b) Applicates shall provide data from at least one sample collected within four and one-half (4 1/2) years prior to the date of the permit application. Samples shall be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The cabinet shall require additional samples, as appropriate, on a case-by-case basis;
(c) All existing data for pollutants specified in paragraph (b) through (e) of the subsection that are collected within four and one-half (4 1/2) years of the application shall be included in the pollutant data summary submitted by the applicant—If the applicant samples for a specific pollutant on a monthly or more frequent basis, it shall only be necessary to summarize all data collected within one (1) year of the application for the pollutant;
(d) Applicates shall collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 C.F.R. Part 136 unless an alternative is specified in the existing KPDES permit.Grab samples shall be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. For a composite sample, only one (1) analysis of the composite of aliquots shall be required; and
(e) All effluent monitoring data provided for this parameter shall include at least the following information for each parameter:
1. Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
2. Average daily discharge for all samples, expressed as concentration or mass, and the number of sample used to obtain this value;
3. The analytical method used; and
4. The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.
(c) Unless otherwise required by the cabinet, metals shall be reported as total recoverable;
(d) Effluent monitoring data for whole effluent toxicity,
(a) All applicants shall provide an identification of any whole effluent toxicity test conducted during the four and one-half (4 1/2) years prior to the date of the application or on any receiving water near the discharge;
(b) As provided in paragraphs (a) through (e) of this subsection, the following applicants shall submit to the cabinet the results of two whole effluent toxicity tests for acute and chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:
1. All POTWs with design-flow rates greater than or equal to 1,000,000 gallons per day;
2. All POTWs with approved pretreatment program or POTWs required to develop a pretreatment program;
3. Other POTWs, as required by the cabinet, based on consideration of the following factors:
(a) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors;
(b) The ratio of effluent flow to receiving stream flow;
(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;
(d) Receiving stream characteristics, including possible known water quality impairment, and whether the POTW discharges to a water designated as an outstanding state resource water; or
(e) Other considerations, including but not limited to the history of toxic impacts and compliance problems at the POTW, that the cabinet determines could cause or contribute to adverse water quality impacts;
(c) If the POTW has two (2) or more outfalls with substantially identical effluent discharging to the same receiving downstream segment, the cabinet may require applicants to submit whole effluent toxicity data for only one (1) outfall on a case-by-case basis. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing-zone;
(d) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide:
1. Results of a minimum of four (4) quarterly tests for a year from the year preceding the permit application or
2. Results from four (4) tests performed at least annually in the four and one-half (4 1/2) year period prior to the application, if the results show no appreciable toxicity using a safety factor determined by the cabinet;
(e) Applicants shall conduct tests with no less than two (2) species of fish, invertebrates, plants, and shellfish for acute or chronic toxicity, depending on the range of receiving water dilution. The applicant shall conduct acute or chronic testing based on the following dilutions:
1. Acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone;
2. Acute or chronic toxicity testing if the dilution of the effluent is greater than 1000:1 and 100:1 at the edge of the mixing zone. Acute toxicity testing may be more appropriate at the higher end of this range (1000:1) and chronic toxicity testing at the lower end of this range (100:1); and
3. Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone;
(f) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit issuance;
(g) Applicants shall provide the results using the format provided by the cabinet, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (b) of this subsection for which such information has not been reported previously to the cabinet;
(h) Whole effluent toxicity testing conducted pursuant to paragraph (b) of this subsection shall be conducted using methods approved under 40 C.F.R. Part 136;
(i) For whole effluent toxicity data submitted to the cabinet within four and one-half (4 1/2) years prior to the date of the application, applicants shall provide the date on which the data were submitted and a summary of the results; and
(j) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half (4 1/2) years revealed toxicity;
(k) Industrial discharges. Applicants shall submit the following information about industrial discharges to the POTW:
(a) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW, and
(b) POTWs with one (1) or more SIUs shall provide the following information for each SIU, as defined at 401 KAR 5-002, Section 4, that discharges to the POTW:
1. Name and mailing address;
2. Description of all industrial processes that affect or contribute to the SIU discharge;
3. Principal products and raw materials of the SIU that affect or contribute to the SIU discharge;
4. Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;
5. Whether the SIU is subject to local limits; and
6. Whether the SIU is subject to categorical standards, and if so, under which categories and subcategories; and
7. Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half (4 1/2) years;
(c) The information required in paragraphs (e) and (f) of this subsection may be waived by the cabinet for POTWs with pre-
treatment programs if the applicant has submitted either of the following that contain information substantively identical to that required in paragraphs (a) and (b) of this subsection:

1. An annual report submitted within one (1) year of the application;
2. A pretreatment program;
3. POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise local limits in accordance with 401 KAR 5-067; and
4. Discharge from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA) 42 U.S.C. 6901 et seq., Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 6901 et seq., or RCRA corrective action wastes or wastes generated at another type of cleanup or remediation site shall provide the following information:

(a) If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 C.F.R. Part 261, the applicant shall report the following:
   1. The method by which the waste is received; and
   2. The hazardous waste number and amount received annually of each hazardous waste;
(b) If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, unless those undertaken pursuant to CERCLA and sections 3004(a) or 3006(n) of RCRA, 42 U.S.C. 6924(a) and 6950(n), the applicant shall report the following:
   1. The identity of the source or facility at which the wastewater originates; and
   2. The identity of the wastewater's hazardous constituent, if known;
(c) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW; and
(d) Applicants shall be exempt from the requirements of paragraphs (a) and (b) of this subsection if they receive no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. 261.30(d) and 261.33(e).
5. Combined sewer overflows (CSOs). Each applicant with combined sewer overflow systems shall provide the following information:
   (a) Combined sewer overflow information. The following information regarding the combined sewer system:
      1. System map. A map indicating the location of the following:
         a. The location of CSO discharge points;
         b. Sensitive use areas potentially affected by CSOs, (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding states resources); and
         c. Waters supporting threatened and endangered species potentially affected by CSOs; and
      2. System diagram. A diagram of the combined sewer collection system that includes the following information:
         a. The location of major sewer trunk lines, both combined and separate sanitary;
         b. The location of points where sewer sanitary sewers feed into the combined sewer system;
         c. In-line and off-line storage structures;
         d. The location of flow regulating devices; and
         e. Locations of pump stations;
   (b) Information on CSO outfalls. The following information for each CSO discharge point covered by the permit application:
      1. Description of outfall. The following information on each outfall:
         a. Outfall number;
         b. State, county, and city or town in which outfall is located;
         c. Latitude and longitude, to the nearest second; and
         d. Distance from shore and depth below surface;
         e. Whether the applicant monitored any of the following in the past year for the CSO:
            i. Rainfall;
            ii. CSO flow volume;
            iii. CSO pollutant concentrations;
            iv. Receiving water quality; or
            v. CSO frequency; and
   (c) The number of storm events monitored in the past year,
   (d) CSO events. The following information about CSO overflows from each outfall:
      a. The number of events in the past year;
      b. The average duration per event, if available;
      c. The average volume per CSO event, if available; and
      d. The minimum rainfall that caused a CSO event, if available, in the last year,
   (e) Description of receiving waters. The following information about receiving waters:
      a. Name of receiving water;
      b. Name of watershed or stream system and the United States Soil Conservation Service watershed identification code if known, and
      c. Name of State Management River Basin and the United States Geological Survey hydrologic cataloging unit eight (8) digit code if known; and
   (f) CSO operations. A description of any known water quality impacts on the receiving water caused by the CSO including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable water quality standard.
   (g) Contractors. All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and
   (h) Signature. All applications shall be signed by a certifying official in compliance with Section 3 of this regulation.
Section 6. Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under the administrative regulation for a period of at least three (3) years from the date the application is signed.
Section 7. Service of Process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal documents for service of process. The last address provided to the cabinet pursuant to the provision shall be the address at which the cabinet may deliver any legal notice including but not limited to service of process in connection with any enforcement action.
Section 8. KPDES Application Testing Requirements. (1) Table I—Gas Chromatography/Mass Spectroscopy (GC/MS) Fractions per Industrial Category.

<table>
<thead>
<tr>
<th></th>
<th>Volatile</th>
<th>Acid</th>
<th>Neutral</th>
<th>Pesticide</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adhesives &amp; sealants</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Aluminum forming</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Auto &amp; other laundries</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Battery manufacturing</td>
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<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>Castings</td>
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<tr>
<td>Coil Coating</td>
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<td>(1)</td>
</tr>
<tr>
<td>Copper forming</td>
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<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Elective &amp; electronic compounds</td>
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<td>(1)</td>
<td>(1)</td>
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<tr>
<td>Electroplating</td>
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<tr>
<td>Explosives manufacturing</td>
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<td>(1)</td>
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</tr>
<tr>
<td>Foundries</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Gum &amp; Wood</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
<td>(1)</td>
</tr>
<tr>
<td>Inorganic chemicals manufacturing</td>
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<td>(1)</td>
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<tr>
<td>Iron &amp; steel manufacturing</td>
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<td>(1)</td>
</tr>
<tr>
<td>Leather tanning &amp; finishing</td>
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<td>(1)</td>
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<td>(1)</td>
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<tr>
<td>Mechanical products manufacturing</td>
<td>(1)</td>
<td>(1)</td>
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</tr>
</tbody>
</table>

\[378\]
## Table II — Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC-MS)

<table>
<thead>
<tr>
<th>Volatiles</th>
<th>Acid Compounds</th>
<th>Base/Neutral</th>
<th>Pesticides</th>
</tr>
</thead>
<tbody>
<tr>
<td>4V-acrolein</td>
<td>4A-2-chlorophenol</td>
<td>4B-acenaphthene</td>
<td>1P-aldrin</td>
</tr>
<tr>
<td>2V-acrylonitrile</td>
<td>4A-2,4-dichlorophenol</td>
<td>2B-acenaphthylene</td>
<td>2P-alpha-BHC</td>
</tr>
<tr>
<td>3V-benzene</td>
<td>4A-2,4-dimethylphenol</td>
<td>3B-anthraene</td>
<td>3P-beta-BHC</td>
</tr>
<tr>
<td>6V-bromofrom</td>
<td>4A,4-6-dinitro-o-cresol</td>
<td>4B-benzidine</td>
<td>4P-gamma-BHC</td>
</tr>
<tr>
<td>6V-carbon-tetrachloride</td>
<td>4A,2,4-dinitrophenol</td>
<td>6B-benz(a)anthracene</td>
<td>5P-delta-BHC</td>
</tr>
<tr>
<td>7V-chlorobenzene</td>
<td>6A-2-nitrophenol</td>
<td>6B-benz(a)pyrene</td>
<td>6P-chloroanide</td>
</tr>
<tr>
<td>8V-chlorodibromomethane</td>
<td>7A-4-nitrophenol</td>
<td>7B,3,4-benzofluoranthene</td>
<td>7P,4,4'-DDT</td>
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<tr>
<td>9V-chloroethane</td>
<td>8A-p-chloro-m-cresol</td>
<td>8B-benz(c)pyrene</td>
<td>8P,4,4'-DDDE</td>
</tr>
<tr>
<td>10V-2-chloroethylvinyl-ether</td>
<td>9A-pentaclorophenol</td>
<td>6B-benz(k)fluoranthene</td>
<td>9P,4,4'-DDD</td>
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<tr>
<td>11V-chlorof orm</td>
<td>10A-phenol</td>
<td>10B-bis(2-chloroethoxy)ethane</td>
<td>10P-dieldrin</td>
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<tr>
<td>12V-dichloremethane</td>
<td>10A-phenol</td>
<td>10B-bis(2-chloroethoxy)ethane</td>
<td>11P-alpha-endsulfan</td>
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<tr>
<td>14V-1,1-dichloroethane</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>10B-bis(2-chloroethoxy)ethane</td>
<td>12P-alpha-endsulfan</td>
</tr>
<tr>
<td>16V-1,2-dichloroethane</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>13B-4-bromophenyl-phenol-ether</td>
<td>13P-alpha-endsulfan-sulfate</td>
</tr>
<tr>
<td>18V-1,4-dichloroethane</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>14B-butylnaphthalate</td>
<td>14P-endrin</td>
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<tr>
<td>17V-1,2-dichlorobenzene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>15B-2-chloronaphthalene</td>
<td>15P-endrin-alkaloid</td>
</tr>
<tr>
<td>18V-1,3-dichloropropylene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>16B-4-chlorophenyl-phenol-ether</td>
<td>16P-heptachlor</td>
</tr>
<tr>
<td>19V-ethylbenzene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>17B-chloroan</td>
<td>17P-heptachlor-epoxide</td>
</tr>
<tr>
<td>20V-methyl-bromide</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>18B-dibenz(a)anthracene</td>
<td>18P-PCB-1242</td>
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<tr>
<td>21V-methyl-chloride</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>19B-1,3-dichlorobenzene</td>
<td>19P-PCB-1254</td>
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<tr>
<td>22V-methylene-chloride</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>20B-1,3-dichlorobenzene</td>
<td>20P-PCB-1221</td>
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<tr>
<td>23V-1,1,2,2-tetrachloroethene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>21B-1,4-dichlorobenzene</td>
<td>21P-PCB-1232</td>
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<tr>
<td>24V-tetrachloroethylene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>22B-3,3'-dichlorobenzidine</td>
<td>22P-PCB-1248</td>
</tr>
<tr>
<td>25V-toluene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>23B-diethyl-phthalate</td>
<td>23P-PCB-1260</td>
</tr>
<tr>
<td>26V-1,2,3,4-tetrachloroethylene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>24B-dimethyl-phthalate</td>
<td>24P-PCB-1016</td>
</tr>
<tr>
<td>27V-1,1,2-trichlorobenzene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>25B-di-n-butyl-phthalate</td>
<td>25P-PCB-1260</td>
</tr>
<tr>
<td>28V-1,1,2,2-tetrachloroethane</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>26B-2,4-dinitrotoluene</td>
<td>26P-tolurethane</td>
</tr>
<tr>
<td>29V-2,2,4-trichlorotoluene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>27B-2,6-dinitrotoluene</td>
<td>27P-PCB-1260</td>
</tr>
<tr>
<td>28V-di-n-octyl-phthalate</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>28B-di-n-octyl-phthalate</td>
<td>28P-toluene</td>
</tr>
<tr>
<td>29V-1,2-diphenylhydrazine</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>29B-1,2-diphenylhydrazine</td>
<td>29P-toluene</td>
</tr>
<tr>
<td>30V-flurathene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>30B-flurathene</td>
<td>30P-toluene</td>
</tr>
<tr>
<td>31V-fluroxonol</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>31B-fluroxonol</td>
<td>31P-toluene</td>
</tr>
<tr>
<td>32V-hexachlorobenzene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>32B-hexachlorobutadene</td>
<td>32P-toluene</td>
</tr>
<tr>
<td>33B-bis(2-chloroethoxy)ethane</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>34B-hexachloroethane</td>
<td>34P-toluene</td>
</tr>
<tr>
<td>36B-hexachlorobenzene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>36B-bis(2-chloroethoxy)phenol</td>
<td>36P-toluene</td>
</tr>
<tr>
<td>37B-4-methylphenol-phenol-ether</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>37B-4-methylphenol-phenol-ether</td>
<td>37P-toluene</td>
</tr>
<tr>
<td>38B-naphthalene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>38B-naphthalene</td>
<td>38P-toluene</td>
</tr>
<tr>
<td>39B-toluene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>40B-n-Nitroso-2-ethylamine</td>
<td>40P-toluene</td>
</tr>
<tr>
<td>41B-n,N-dimethylformamide</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>42B-n,N-dimethylaniline</td>
<td>42P-toluene</td>
</tr>
<tr>
<td>43B-phenanthrene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>44B-phenanthrene</td>
<td>44P-toluene</td>
</tr>
<tr>
<td>45B-1,2,4-trichlorobenzene</td>
<td>11A-2,4,6-trichlorophenol</td>
<td>46B-1,2,4-trichlorobenzene</td>
<td>46P-toluene</td>
</tr>
</tbody>
</table>
### Table III: Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

<table>
<thead>
<tr>
<th>Pollutant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony, Total</td>
</tr>
<tr>
<td>Arsenic, Total</td>
</tr>
<tr>
<td>Boron, Total</td>
</tr>
<tr>
<td>Cadmium, Total</td>
</tr>
<tr>
<td>Chromium, Total</td>
</tr>
<tr>
<td>Copper, Total</td>
</tr>
<tr>
<td>Lead, Total</td>
</tr>
<tr>
<td>Mercury, Total</td>
</tr>
<tr>
<td>Nickel, Total</td>
</tr>
<tr>
<td>Selenium, Total</td>
</tr>
<tr>
<td>Silver, Total</td>
</tr>
<tr>
<td>Thallium, Total</td>
</tr>
<tr>
<td>Zinc, Total</td>
</tr>
<tr>
<td>Cyanide, Total</td>
</tr>
<tr>
<td>Phenol, Total</td>
</tr>
</tbody>
</table>

### Table IV: Conventional and Nonconventional Pollutants Required to Be Tested by Existing Dischargers if Expected to Be Present

<table>
<thead>
<tr>
<th>Pollutant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bromide</td>
</tr>
<tr>
<td>Chlorine, Total Residual</td>
</tr>
<tr>
<td>Color</td>
</tr>
<tr>
<td>Fecal Coliform</td>
</tr>
<tr>
<td>Fluoride</td>
</tr>
<tr>
<td>Nitrate-Nitrite</td>
</tr>
<tr>
<td>Nitrogen, Total Organic</td>
</tr>
<tr>
<td>Oil and Grease</td>
</tr>
<tr>
<td>Phosphorus, Total</td>
</tr>
<tr>
<td>Radioactivity</td>
</tr>
<tr>
<td>Sulfate</td>
</tr>
<tr>
<td>Sulfide</td>
</tr>
<tr>
<td>Sulfite</td>
</tr>
<tr>
<td>Surfactants</td>
</tr>
<tr>
<td>Aluminum, Total</td>
</tr>
<tr>
<td>Barium, Total</td>
</tr>
<tr>
<td>Boron, Total</td>
</tr>
<tr>
<td>Cobalt, Total</td>
</tr>
<tr>
<td>Iron, Total</td>
</tr>
<tr>
<td>Magnesium, Total</td>
</tr>
<tr>
<td>Molybdenum, Total</td>
</tr>
<tr>
<td>Manganese, Total</td>
</tr>
<tr>
<td>Tin, Total</td>
</tr>
<tr>
<td>Titanium, Total</td>
</tr>
</tbody>
</table>

### Table V: Toxic Pollutants and Hazardous Substances Required to Be Identified by Existing Dischargers if Expected to Be Present

<table>
<thead>
<tr>
<th>Toxic Pollutant</th>
<th>Hazardous Substance</th>
<th>Hazardous Substances, continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aecotox</td>
<td>Acetaldehyde</td>
<td>Methone</td>
</tr>
<tr>
<td></td>
<td>Allyl-alcohol</td>
<td>Mercaptalanethanol</td>
</tr>
<tr>
<td></td>
<td>Allyl-chloride</td>
<td>Methylmercaptan</td>
</tr>
<tr>
<td></td>
<td>Amyl-acetate</td>
<td>Methyl-propionate</td>
</tr>
<tr>
<td></td>
<td>Amine</td>
<td>Methyl-n-propionate</td>
</tr>
<tr>
<td></td>
<td>Benzodinitro</td>
<td>Methyl-paratoluene</td>
</tr>
<tr>
<td></td>
<td>Benzylic-hyde</td>
<td>Mvinphos</td>
</tr>
<tr>
<td></td>
<td>Butyl-acetate</td>
<td>Mescalbarato</td>
</tr>
<tr>
<td></td>
<td>Butylamine</td>
<td>Monomethyl-amine</td>
</tr>
<tr>
<td></td>
<td>Captan</td>
<td>Monomethyl-amine</td>
</tr>
<tr>
<td></td>
<td>Carboxylic</td>
<td>Naled</td>
</tr>
<tr>
<td></td>
<td>Carboburan</td>
<td>Naphtholic-acid</td>
</tr>
<tr>
<td></td>
<td>Carbon-disulfide</td>
<td>Nitrotoluene</td>
</tr>
<tr>
<td></td>
<td>Chlorpyrifos</td>
<td>Parathion</td>
</tr>
<tr>
<td></td>
<td>Comphos</td>
<td>Phenolsulfonate</td>
</tr>
<tr>
<td></td>
<td>Cresol</td>
<td>Phosgene</td>
</tr>
<tr>
<td></td>
<td>Crotonaldehyde</td>
<td>Propargile</td>
</tr>
<tr>
<td></td>
<td>Cyclohexane</td>
<td>Propylene-oxide</td>
</tr>
<tr>
<td></td>
<td>2,4-D (2,4-D)</td>
<td>Pyrroline</td>
</tr>
<tr>
<td></td>
<td>Dichlorophenolyl-4-acid</td>
<td>Quinoline</td>
</tr>
<tr>
<td></td>
<td>Diethylamine</td>
<td>Resorcinol</td>
</tr>
<tr>
<td></td>
<td>Dimethylamine</td>
<td>Strychnine</td>
</tr>
<tr>
<td></td>
<td>Dibromomethane</td>
<td>Styrene</td>
</tr>
<tr>
<td></td>
<td>2,4,6-T (2,4,6-T)</td>
<td>2,4,6-Trichlorophenol-4-acid</td>
</tr>
<tr>
<td></td>
<td>Dibromofluoromethane</td>
<td>TDE (Tetrahydroxyphenol)</td>
</tr>
<tr>
<td></td>
<td>Dibromochloromethane</td>
<td>2,4,6-Tribromo-4-acid</td>
</tr>
</tbody>
</table>
### Table VI—Effluent Parameters for All POTWs

<table>
<thead>
<tr>
<th>Biochemical oxygen demand (BOD₅ or CBOD₅)</th>
<th>Fecal coliform</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Flow Rate</td>
<td></td>
</tr>
<tr>
<td>pH</td>
<td></td>
</tr>
<tr>
<td>Temperature</td>
<td></td>
</tr>
<tr>
<td>Total suspended solids</td>
<td></td>
</tr>
</tbody>
</table>

### Table VII—Effluent Parameters for All POTWs with a Flow Equal to or Greater than 0.1 MGD

<table>
<thead>
<tr>
<th>Ammonia (as-N)</th>
<th>Chlorm (total residual, TRC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissolved oxygen</td>
<td>Nitrate/Nitrite</td>
</tr>
<tr>
<td>Kjeldahl nitrogen</td>
<td>Oil and grease</td>
</tr>
<tr>
<td>Phosphate</td>
<td>Total dissolved solids</td>
</tr>
</tbody>
</table>

### Table VIII—Effluent Parameters for Selected POTWs

<table>
<thead>
<tr>
<th>Volatile-Organic Compounds</th>
<th>Acid Extractable Compounds</th>
<th>Base/Neutral Compounds</th>
<th>Metals (total recoverable), cyanide and total phenols</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acrolein</td>
<td>P-chloro-m-erea</td>
<td>Aenaphthene</td>
<td>Hardness</td>
</tr>
<tr>
<td>Acrylonitrile</td>
<td>2-chlorophenol</td>
<td>Aenaphthylene</td>
<td>Antimony</td>
</tr>
<tr>
<td>Acrylonitrile</td>
<td>2,4-dichlorophenol</td>
<td>Anthraene</td>
<td>Arsenic</td>
</tr>
<tr>
<td>Acrylonitrile</td>
<td>2,4-dimethylphenol</td>
<td>Benzidine</td>
<td>Beryllium</td>
</tr>
<tr>
<td>Bromonitrite</td>
<td>4,6-dinitro-o-erole</td>
<td>Benzo(a)anthraene</td>
<td>Cadmium</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>2,4-dinitrophenol</td>
<td>Benzo(a)pyrene</td>
<td>Chromium</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>2-nitrophenol</td>
<td>3,4-benzofluoranthene</td>
<td>Copper</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>4-nitrophenol</td>
<td>Benzog(chlorophen)</td>
<td>Lead</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>Pentachlorophenol</td>
<td>Benzo(k)fluoranthene</td>
<td>Mercury</td>
</tr>
<tr>
<td>Chloroform</td>
<td>2,4,6-trichlorophenol</td>
<td>Bis-(2-chloroethyl)phenol</td>
<td>Nickel</td>
</tr>
<tr>
<td>Chloroform</td>
<td></td>
<td>Bis-(2-chloroethyl)-eter</td>
<td>Selenium</td>
</tr>
<tr>
<td>Chloroform</td>
<td></td>
<td>Bis-(2-chloroethyl)-ether</td>
<td>Silver</td>
</tr>
<tr>
<td>Chloroform</td>
<td></td>
<td>Bis-(2-chloroethyl)-ether</td>
<td>Thallium</td>
</tr>
<tr>
<td>Chloroform</td>
<td></td>
<td>Bis-(2-chloroethyl)-ether</td>
<td>Zinc</td>
</tr>
<tr>
<td>Dichlorobromomethane</td>
<td></td>
<td>4-bromophenyl phenyl ether</td>
<td>Cyanide</td>
</tr>
<tr>
<td>Dichlorobromomethane</td>
<td></td>
<td>Butyl benzyl phthalate</td>
<td>Total-phenolic compounds</td>
</tr>
<tr>
<td>1,1-dichloroethylene</td>
<td></td>
<td>9-chloronaphthalene</td>
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</tr>
<tr>
<td>1,1-dichloroethane</td>
<td></td>
<td>4-chlorophenyl phenyl ether</td>
<td></td>
</tr>
<tr>
<td>1,1-dichloroethane</td>
<td></td>
<td>Chrysene</td>
<td></td>
</tr>
<tr>
<td>1,2-dichloroethane</td>
<td></td>
<td>Di-n-butyl phthalate</td>
<td></td>
</tr>
<tr>
<td>1,2-dichloroethane</td>
<td></td>
<td>Di-n-octyl phthalate</td>
<td></td>
</tr>
<tr>
<td>1,2-dichloroethane</td>
<td></td>
<td>Dibenz(a,h)anthraene</td>
<td></td>
</tr>
<tr>
<td>1,2-dichloroethane</td>
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<td>1,2-dichlorobenzene</td>
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</tr>
<tr>
<td>1,3-dichloropropylene</td>
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<td>1,4-dichlorobenzene</td>
<td></td>
</tr>
<tr>
<td>1,3-dichloropropylene</td>
<td></td>
<td>2,3-dichlorebenzidine</td>
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</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Dinitro phthalate</td>
<td></td>
</tr>
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<td>Ethylbenzene</td>
<td></td>
<td>Dimethyl phthalate</td>
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</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>2,4-dinitrotoluene</td>
<td></td>
</tr>
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<td>Ethylbenzene</td>
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<td>2,6-dinitrotoluene</td>
<td></td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>1,2-diphenyldihydrazine</td>
<td></td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Fluoranilene</td>
<td></td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Fluorone</td>
<td></td>
</tr>
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<td>Ethylbenzene</td>
<td></td>
<td>Hexachlorobenzene</td>
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<td>Hexachlorobenzene</td>
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<td></td>
<td>Dinitro phthalate</td>
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<td>Dimethyl phthalate</td>
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<td>Ethylbenzene</td>
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<td>2,4-dinitrotoluene</td>
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<td>Ethylbenzene</td>
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<td>2,6-dinitrotoluene</td>
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<tr>
<td>Ethylbenzene</td>
<td></td>
<td>1,2-diphenyldihydrazine</td>
<td></td>
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<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Fluoranilene</td>
<td></td>
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<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Fluorone</td>
<td></td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Hexachlorobenzene</td>
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<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Dinitro phthalate</td>
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<td>Ethylbenzene</td>
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<td>Dimethyl phthalate</td>
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<td>Ethylbenzene</td>
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<td>2,4-dinitrotoluene</td>
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<td>Ethylbenzene</td>
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<td>2,6-dinitrotoluene</td>
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<tr>
<td>Ethylbenzene</td>
<td></td>
<td>1,2-diphenyldihydrazine</td>
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<td>Ethylbenzene</td>
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<td>Fluoranilene</td>
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<td>Ethylbenzene</td>
<td></td>
<td>Fluorone</td>
<td></td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td></td>
<td>Hexachlorobenzene</td>
<td></td>
</tr>
</tbody>
</table>
### Section 9. Signatories to Permit Applications and Reports

Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer shall be:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation;

2. The manager of one (1) or more manufacturing, production, or operating facilities, if the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implied duty of making major capital-investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship by a partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency shall include:

1. The chief executive officer of the agency;

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

(2) All reports required by permits and other information requested by the cabinet shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any report, information, or application to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsections (1) or (2) of this section shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

### Section 10. Concentrated Animal Feeding Operations

(1) Permit requirement. Concentrated animal feeding operations are point sources subject to the KDDES permit program.

(2) Case-by-case designation of concentrated animal feeding operations.

(a) The cabinet may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:

1. The size of the animal feeding operation and the amount of waste reaching waters of the Commonwealth;

2. The location of the animal feeding operation relative to waters of the Commonwealth;

3. The means of conveyance of animal wastes and process waste waters into waters of the Commonwealth;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the Commonwealth;

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals defined in 401(KAR 6.002) shall be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device, or

2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals or their wastes confined in the operation.

(c) A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the cabinet has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

### Section 11. Concentrated Aquatic Animal Production Facilities

(1) Permit requirement. Concentrated aquatic animal production facilities, as set forth in this section, are point sources subject to the KDDES permit program.

(2) A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this section if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals, including but not limited to, the salmonidae family of fish, e.g., trout and salmon, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 1,000 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per...
year; and
2. Facilities which feed less than 2,272 kilogramme (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm-water fish species or other warm-water aquatic animals, including but not limited to the Amurilus, Conidae, and Cyprinidae families of fish; e.g., respectively, catfish, eel, and minnows, in ponds, reservoirs, or other similar structures which discharge at least thirty (30) days per year, but does not include:
1. Closed ponds which discharge only during periods of excess runoff or
2. Facilities which produce less than 46,454 harvest-weight kilogramme (approximately 100,000 pounds) of aquatic animals per year.

(c) Case-by-case designation of concentrated aquatic animal production facilities.

1. The cabinet may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:
1. The location and quality of the receiving waters of the Commonwealth;
2. The holding, feeding and production capacities of the facility;
3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and
4. Other relevant factors.

(b) A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the cabinet has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

Section 12. Storm Water Discharges. (1) Permit requirement.
(a) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a KDPS permit except:
1. A discharge with respect to which a permit has been issued prior to February 4, 1987;
2. A discharge associated with industrial activity (see also paragraph (d) of this subsection);
3. A discharge from a large municipal-separate storm sewer system;
4. A discharge from a medium municipal-separate storm sewer system;
5. A discharge which the cabinet or the EPA regional administrator determines to contribute to a violation of a water quality standard or to be a significant contributor of pollutants to waters of the Commonwealth. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (b) of this subsection or agricultural storm water runoff which is exempt from the definition of point source in 401 KAR 5-002. The cabinet may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the cabinet may consider the following factors:
1. The location of the discharge with respect to waters of the Commonwealth;
2. The size of the discharge;
3. The quantity and nature of the pollutants discharged to water of the Commonwealth; and
4. Other relevant factors.

(b) The cabinet shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances including but not limited to pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with any overburden, raw materials, intermediate products, finished product, byproduct or waste products located on the site of these operations.

(c) Large- and medium-municipal-separate storm sewer systems.
1. Permits shall be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The cabinet may issue one (1) system-wide permit covering all discharges from large or medium municipal storm sewer systems or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to all discharges owned or operated by the same municipality, located within the same jurisdiction, all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

3. The owner or operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system shall either:
   a. Participate in a permit application, i.e., be a permittee or a co-permittee, with one (1) or more other owners or operators of discharges from the large or medium municipal storm sewer system which covers all or a portion of all discharges from the municipal separate storm sewer system;
   b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewer systems for which the owner or operator is responsible; or
   c. A regional authority may be responsible for submitting a permit application under the following guidelines:

   (i) The regional authority together with co-permittees shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

   (ii) The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application; and

   (iii) Each of the owners or operators of municipal separate storm sewer systems within the systems defined in 401 KAR 5-002, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection (d) of this section.

4. One (1) permit application may be submitted for all or a portion of all municipal separate storm sewer systems within an adjacent or interconnected large or medium municipal separate storm sewer system. The cabinet may issue one (1) system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

5. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

6. Permittees shall only be required to comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are owners or operators.

(d) Discharges through large and medium municipal separate storm sewer systems in addition to meeting the requirements of subsection (c) of this section, an owner or operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the owner or operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing the discharge the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing KDPS permit number.

(e) Other municipal separate storm sewer systems. The cabinet may issue permits for municipal separate storm sewer systems that are designated under paragraph (a) of this section on a system-wide basis, jurisdiction-wide basis, watershed-wide or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which
diacharge through a nonmunicipal or nonpublicly-owned separate storm-sewer system, the cabinet may issue a single KPDES permit, with each discharger a copetentee to a permit issued to the owner or operator of the portion of the system that discharges into waters of the Commonwealth; or, individual permits to each discharger of storm-water associated with industrial activity through the high-municipal-conveyance system.

1. All storm-water discharges associated with industrial activity that discharge through a storm-water discharge system that is not a municipal separate storm sewer shall be covered by an individual permit, or a permit issued to the owner or operator of the portion of the system that discharges to waters of the Commonwealth, with each discharger to the nonmunicipal-conveyance system a copetentee to that permit.

2. If there is more than one (1) owner or operator of a single system of nonmunicipal conveyance, all operators of storm-water discharges associated with industrial activity shall submit applications.

3. Any permit covering more than one (1) owner or operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm-water runoff combined with municipal sewage are point sources that shall obtain KPDES permits in accordance with the procedures of Section 5 of this administrative regulation and shall not be subject to the provisions of this section.

(h) Whether a discharge from a municipal separate storm sewer is allowed under the requirements of this section shall be based on whether the owner or operator of the discharge is eligible for funding under the Clean Water Act, 33 U.S.C. 1221 at seq. See 40 C.F.R. Part 35, Subpart 1, Appendix A.

(i) On or after October 1, 1994, for discharges composed entirely of storm-water, that are not required by subsection (h) or (i) of this section to obtain a permit, operators shall be required to obtain a KPDES permit only if:

1. The discharge is from a small MS4 required to be regulated pursuant to subsection (7) of this section.

2. The discharge is a storm-water discharge associated with small construction activity pursuant to 401 KAR 6:002.

3. The cabinet, or the EPA Regional Administrator, determines that storm-water controls are needed for the discharge based on wastewater allocations that are part of the total maximum daily load (TMDLs) that address the pollutant(s) of concern, or

4. The cabinet, or the EPA Regional Administrator, determines that the discharge, or catagory of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.

(j) Operators of small MS4s designated pursuant to paragraph (h)(1), (2), and (3) of this section shall seek coverage under an KPDES permit in accordance with subsection (7) of this section.

(k) Operators of storm-water discharges designated pursuant to paragraph (h)(2), (3), and (4) of this subsection shall apply to the cabinet for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the cabinet.

(l) Application requirements for storm-water discharges associated with industrial activity and storm-water discharges associated with small construction activity

(i) Individual application. Dischargers of storm-water associated with industrial activity and with small-construction activity shall apply for an individual permit or seek coverage under a promulgated storm-water general permit. Facilities that are required to obtain an individual permit or an effluent limits permit of storm water which the cabinet is evaluating for designation under paragraph (h)(4) of this subsection and are not a municipal separate storm sewer shall submit a KPDES application in accordance with the requirements of Section 3 of this administrative regulation as modified and supplemented by the provisions of the remainder of this paragraph. Applicants shall submit Form 1 and Form 4. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form F. Applicants for discharges composed of storm water and nonstorm water shall submit Form 1,
permits. A group application shall consist of:

1. Part I. Part I of a group application shall:
   a. Identify the participants in the group—application by name and location. Kentucky facilities participating in the group application shall be included in precipitation zone 2 as given in Appendix E of 40 C.F.R. Part 122; and
   b. Include a narrative description summarizing the industrial activities of participants in the group application and explaining why the participants, as a whole, are sufficiently similar to be covered by a general permit.

c. Include a list or significant materials stored exposed to precipitation in the group application.

2. Part II. Part II of the dischargers participating in the group application shall be required to:
   a. Minimize or eliminate, as part of the group’s application, the materials that are stored or exposed to precipitation and that are stored in a large capacity.
   b. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.

3. Part III. Part III of the dischargers participating in the group application shall be required to:
   a. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.
   b. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.

4. Part IV. Part IV of the dischargers participating in the group application shall be required to:
   a. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.
   b. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.

5. Part V. Part V of the dischargers participating in the group application shall be required to:
   a. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.
   b. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.

6. Part VI. Part VI of the dischargers participating in the group application shall be required to:
   a. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.
   b. Minimize or eliminate, as part of the group’s application, the storage of materials that are stored in a large capacity.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

vice boundary of the municipal storm sewer system-covered by the permit application. The following information shall be provided:

(i) The location of known municipal storm sewer system culverts discharging to waters of the Commonwealth;

(ii) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural and industrial use) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(iii) The location and a description of the activities of the facility in each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(iv) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a KPDES permit;

(v) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(vi) The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snowfall estimates or summary of weather bureau data and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quantity of discharges from the municipal storm sewer, including a description of the discharge–sampling, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments and lakes, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving these discharges have been:

(i) Assessed and reported in Section 306(b), 33 U.S.C. 1314(b) reports submitted by the Commonwealth, the basic for the assessment, evaluated or monitored, a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of non attainment of designated use;

(ii) Listed under Section 304(h)(1)(A)(i), Section 304(h)(1)(A)(ii), or Section 304(h)(1)(B) of the CWA, 33 U.S.C. 1314(h)(1)(A)(ii) that is not expected to meet water quality standards or water quality goals;

(iii) Listed in state nonpoint source assessments required under Section 319(a) of the CWA, 33 U.S.C. 1329(a); that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution, or contributing to a violation of water quality standards;

(iv) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under Section 314(a) of the CWA, 33 U.S.C. 1324(a). The following shall be included: a description of those publicly owned lakes for which use are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into these lakes, and a description of methods and procedures to restore the quality of those lakes;

(v) Recognized by the applicant as having valued or sensitive water body?

(vi) Defined by the U.S. Fish and Wildlife Service’s National Wetlands Inventory as wetlands; and

(vii) Found to have pollutants in bottom sediments, fish tissue or biocenrus data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for each field screening point or major outfall, of usual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24) hour period with a minimum period of four (4) hours between samples. For all samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstorm water discharges or illegal dumping shall be provided. In addition, a narrative description of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total zinc, and sodium levels (surfactants) shall be provided along with a description of the flow rate. If the field analysis does not involve analytical methods referenced in 40 C.F.R. Part 132, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. All field screening points shall be either major outfalls, other outfall points or any other point of access such as manholes randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(i) A grid system consisting of perpendicular north–south and east–west lines spaced one–fourth (1/4) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(ii) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(iii) Field screening points should be located downstream of any source of suspected illegal or illicit discharge;

(iv) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell. Safety of personnel and accessibility of the location shall be considered in making this determination;

(v) Hydrological conditions; total drainage area of the site; population density of the city; traffic density; age of the structures or buildings in the area; history of the area; and land use type;

(vi) For medium–municipal separate storm sewer systems, at least 250 cells shall have identified field screening points; in large municipal separate storm sewer systems, at least 500 cells shall have identified field screening points; cells established by the grid that contain no storm sewer systems shall be eliminated from consideration; if fewer than 260 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening unless access to the separate storm sewer system is impossible; and

(vii) Each large or medium municipal separate storm sewer system which are unable to utilize the procedures described in clause (i) through (vi) of the subparagraph, because a sufficiently detailed map of the separate storm sewer system is unavailable, shall field screen no more than 600 or 250 major outfalls respectively, at all major outfalls in the system, if less. In these circumstances, the applicant shall establish a grid system consisting of north–south and east–west lines spaced one–fourth (1/4) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a sense of cells. The applicant shall then select major outfalls in as many cells as possible until at least 600 major outfalls for large municipalities or 250 major outfalls for medium municipalities are selected; a field screening analysis shall be undertaken at those major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of paragraph (b)(3) of the subsection. The description shall include the location of outfalls or field screening points appropriate for representative data collection under paragraph (b)(3) of the subsection, a description of why the outfall or field screening point is representative, the source during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for sampling shall reflect water quality concerns (see clause d of this subparagraph to the extent practicable).

5. Management program.

a. A description of the existing management program to control pollutants from the municipal separate storm sewer system.
The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Controls may include, but are not limited to, procedures to control pollution from construction activities, food plant management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law, as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description shall include inspection procedures and methods for detection and preventing illicit discharges, and describe how much the program has been implemented.

c. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs shall be provided.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or agreement, or owns or controls the property at a minimum for:
   a. Control of ordinance, permit, contract, order, or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;
   b. Prohibit, through ordinance, order, or similar means, illicit discharges to the municipal separate storm sewer;
   c. Control through ordinance, order, or similar means, the discharge to a municipal separate storm sewer of illicit discharges to the municipal separate storm sewer;
   d. Control through interagency agreements among applicants and contributors the contribution of pollutants from one (1) portion of the municipal system to another portion of the municipal system;
   e. Require compliance with conditions in ordinances, permits, contracts, or orders; and
   f. Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. List the locations of any major outfalls that discharge pollutants to the Commonwealth that were not reported under paragraph (a)(2)(ii) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description, such as SIC code, that best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer, storm water associated with industrial activity.

3. Characterization data. If qualitative data for a pollutant are required under paragraph (a)(3)(c) of this subsection, the applicant shall collect a sample of effluent in accordance with Section 7 of this administrative regulation and analyze it for the pollutant in accordance with analytical methods referenced in 40 C.F.R. Part 136. If the analytical method is approved the applicant may use any suitable method but shall provide a description of the method. The applicant shall provide information characterizing the quality and quantity of discharges covered in the permit application, including:

   a. Quantitative data from representative outfalls designated by the cabinet. Based on information received in Part 1 of the application, the cabinet shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential, and industrial land use activities of the drainage area contributing to the Commonwealth. If there are less than five (5) or more than ten (10) outfalls or field screening points covered in the application, the cabinet shall designate all outfalls. A monitoring plan shall be developed as follows:

   (i) For each outfall or field screening point designated under this clause, samples shall be collected from storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements of Section 7 of this administrative regulation. The cabinet may allow exemptions to sampling three (3) storm events if climatic conditions create good cause for such exemptions;

   (ii) A narrative description shall be provided of the date and duration of the storm event sampled, rainfall estimates for the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous greater than one-tenth (0.1) inch rainfall storm event;

   (iii) For samples collected and described under subclause (i) and (ii) of this clause, quantitative data shall be provided for the pollutants listed in Section 7(4) and (5) of this administrative regulation, and for the following:

   Total suspended solids (TSS)
   Total dissolved solids (TDS)
   
   COD
   BOD
   Nitrogen
   Nitrous oxide
   Dissolved phosphorus
   Total ammonia nitrogen
   Total phosphorus

   (iv) List additional, limited/quantitative data required by the cabinet for determining permit conditions. The cabinet may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sampling, form of precipitation (snowfall, rainfall) and other parameters necessary to ensure representativeness.

b. Estimates of annual pollutant load of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls during a storm event for BOD, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods.

c. A proposed schedule to provide estimates for each major outfall identified in either paragraph 3 of this subsection or paragraph (a)(3)(c) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under clause a of this paragraph, and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled, or the location of in-stream stations, where the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

d. Proposed management program. A proposed management program shall cover the duration of the permit. It shall include a comprehensive planning process which involves public participation and full notice intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and other measures, which provide the maximum extent practicable. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each applicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdictional basis, or on individual outfalls. Proposed programs shall be considered by the cabinet when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. The proposed management programs shall describe priorities for implementing controls. The program shall be based on:

   a. A description of structural and source control measures to reduce pollutants from runoff from commercial and industrial land use activities of the drainage area contributing to the Commonwealth.

- 387 -
and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(i) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants, including floatables, in discharges from municipal-separate storm sewers;

(ii) A description of planning procedures, including a hypothesis to develop, implement and enforce controls to reduce the discharge of pollutants from municipal-separate storm sewers, which receive discharges from areas of new development and significant redevelopment. The plan shall address controls to reduce pollutants in discharges from municipal-separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal-separate storm sewers containing construction site runoff are addressed in clause d of this subparagraph;

(iii) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact of receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(iv) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and existing structural flood control devices have been evaluated to determine if retrofitting the devices to provide additional pollutant removal from storm water is feasible;

(v) A description of a program to monitor pollutants in runoff from stationary, non-stationary, on-site and off-site, municipal, industrial, and other sources, and storage or disposal facilities for municipal waste, which shall identify priority pollutants and procedures for inspections and establishing and implementing control measures for the discharges. This program may be coordinated with the program developed under clause e of this subparagraph; and

(vi) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal-separate storm sewers associated with the application of pesticides, herbicides and fertilizers, which shall include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-ofways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove, or require the discharge to the municipal-separate storm sewer to obtain a separate KPDES permit, for illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(c) A description of a program, including inspections, to implement and enforce an ordinance, order or similar means to prevent illicit discharges to the municipal-separate storm sewer system. The program shall address steps to conduct on-site inspections of illicit discharges and the enforcement of such discharges. The following category of on-site water discharges or flows shall be addressed if the discharges are identified by the municipality as sources of pollutants to waters of the Commonwealth: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from oral space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitat and wetlands, dechlorinated swimming pool discharges, and street wash water. Program descriptions shall address discharges or flows from firefighting only if the discharge or flows are identified as significant sources of pollutants to waters of the Commonwealth;

(ii) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by the field screen;

(iii) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstorm water. The procedures may include sampling procedures for constituents such as fecal coliform, fecal streptococci, surfactants (MBAS), residual chlorine, fluoride and potassium; detecting with fluorometric dyes; or conducting in-storm sewer inspections if safety and other considerations allow. The description shall include the location of storm sewers that have been identified for the evaluation;

(iv) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal-separate storm sewer;

(v) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal-separate storm sewers;

(vi) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials, within industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SAARA, 42 U.S.C. 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(i) Identify priorities and procedures for inspections and establishing and implementing control measures for those discharges and;

(ii) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in clause c of this subparagraph, to be implemented during the term of the permit, including the submission of qualitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, if applicable, any pollutant listed in an existing KPDES permit for a facility, oil and grease, CO₃, pH, COD, BOD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under section 227(2)(i) and (g) of the administrative regulation.

c. A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(i) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(ii) A description of requirements for nonstructural and structural best management practices;

(iii) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the necessity, timing, location, cost, and the characteristics of soils and receiving water quality; and

(iv) A description of appropriate educational and training measures for construction site operators.

6. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal-storm sewer constituents from municipal-storm sewer systems expected as the result of the municipal-storm-water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

6. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the program under subparagraphs 3 and 4 of this paragraph. This analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of the funds.

7. If more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

8. If requirements under paragraph (a)(4) of this subsection and subparagraphs 2, 3, and 4 of this paragraph are not practicable or are not applicable, the cabinet may exclude any operator of a discharge from a municipal separate storm sewer which is designated under subparagraph 1(a)(6), (2)(d) or (g)(i) of this section from these requirements. The cabinet shall not exclude the owner
or operator of a discharge from a municipal separate storm sewer identified in 40 C.F.R. 122, Appendix F; G; H; or I, from any of the permit-application requirements under this subparagraph except if authorized under this section.

(c) Individual facilities. Any owner or operator of a point source required to obtain a permit under subsection (1)(a) of this section that does not have an effective KPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) Individual applications.

(a) Except as provided in subparagraph 2 of this paragraph, for an storm water discharge associated with industrial activity defined in 401 KAR 5-002 that is not part of a group application as described in subsection (2)(b) of this section or which is not authorized by a storm water general permit, a permit application made pursuant to subsection (2) of this section shall be submitted to the cabinet by October 1, 1992;

(b) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, the permit application shall be submitted by March 10, 2003;

(c) For any group application submitted in accordance with subsection (2)(b) of this section:

(1) Part 1.

(a) Except as provided in clause (b) of this subparagraph, Part 1 of the application shall be submitted to the U.S. EPA Director, Office of Water Enforcement and Permits by September 30, 1993; and

(b) Any municipality with a population of less than 250,000 shall not be required to submit a Part 1 application before May 18, 1992; and

(c) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications shall not be required.

(2) Based on information in the Part 1 application, the director shall approve or deny the members in the group application within sixty (60) days after receiving Part 1 of the group application.

(3) Part 2.

(a) Except as provided in clause (b) of this subparagraph, Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by October 1, 1992; and

(b) Any municipality with a population of less than 250,000 shall not be required to submit a Part 2 application before May 17, 1993; and

(c) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications shall not be required.

(4) Rejected facilities.

(a) Except as provided in clause (b) of this subparagraph, facilities that are rejected as members of a group shall submit an individual application or obtain coverage under an applicable general permit no later than twelve (12) months after the date of receipt of the notice of rejection or October 1, 1992, which ever comes first.

(b) Facilities that are owned or operated by a municipality and that are rejected as members of Part I group application shall submit an individual application no later than 180 days after the date of the notice of rejection or October 1, 1992, whichever is later.

(c) A facility defined as a storm water associated with industrial activity in 401 KAR 5-002 may add on to a group application submitted in accordance with subparagraph 1 of the paragraph at the discretion of the U.S. EPA Office of Water Enforcement and Permit, if there is a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 15, 1992. The addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than ten (10) percent, unless there are over 100 facilities in the group that are submitting quantitative data. Approval to become part of group application shall be obtained from the group or the trade association representing the individual facilities.

(d) For any discharge from a large municipal separate storm sewer system.

(1) Part I of the application shall be submitted to the cabinet by November 18, 1991.

(2) Based on information received in the Part I application the cabinet shall approve or deny a sampling plan under subsection (3)(a)(e) of this section within ninety (90) days after receiving the Part I application; and

(3) Part II of the application shall be submitted to the cabinet by November 16, 1992.

(e) For any discharge from a medium municipal separate storm sewer system.

(1) Part I of the application shall be submitted to the cabinet by May 18, 1992.

(2) Based on information received in the Part I application the cabinet shall approve or deny a sampling plan within ninety (90) days after receiving the Part I application.

(3) Part II of the application shall be submitted to the cabinet by May 17, 1993.

(4) For any discharge from a regulated small MS4, the permit application made under subsection (8) of this section shall be submitted to the cabinet by:

(a) March 10, 2003 if designated under subsection (7)(a)(1) of this section unless the MS4 serves a jurisdiction with a population under 60,000 and the cabinet has established a phased schedule under 40 C.F.R. 122.36(5)(c) (see subsection (9)(c) of this section); or

(b) Within 180 days of notice, unless the cabinet grants a later date, if designated under subsection (7)(a)(2) of this section (see subsection (9)(d)(2) of this section).

(f) For any storm water discharge associated with small constructor activity identified in 401 KAR 5-002, Section 1 (see subsection (1) of this section). Discharges from these sources shall require permit authorization by March 10, 2003 unless designated for coverage before then.

(g) A permit application shall be submitted to the cabinet within 180 days of notice, unless permission for a later date is granted by the cabinet for:

(1) A storm water discharge which either the cabinet or the EPA Regional Administrator determines to be a violation of a water quality standard or as a significant contributor of pollutants to waters of the Commonwealth (see subsection (1)(a) of this section and 401 KAR 5-002, Section 1(2)(b)); or

(2) A storm water discharge subject to subsection (2)(a) of this section.

(h) Facilities with existing KPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of Section 2 of this administrative regulation and subsection (2) of this section 180 days before the expiration of the permits.

(5) Petitions.

(a) Any owner or operator of a municipal separate storm sewer system may petition the cabinet to require a separate KPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the cabinet to require a KPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.

(c) The owner or operator of a municipal separate storm sewer system may petition the cabinet to reduce the census estimate of the population served by such separate system to account for storm water discharges to combined sewers as defined by 401 KAR 5-002, Section 1(50), that is treated in a publicly owned treatment works. In municipalities or regional authorities in which combined sewers are operated, the census estimate of population may be reduced proportionally to the fraction, based on estimated length of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers if an applicant has submitted the KPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow.
VOLUME 56, NUMBER 2 – AUGUST 1, 2009

discharge-point.

(d) Any person may petition the cabinet for the designation of a large, medium, or small munispatal separate storm-water system as defined in 401 KAR 6.002.

(e) The cabinet shall make a final determination on any petition received under this section within ninety (90) days after receiving the petition, with the exception of petitions to designate a small MS4, in which case the cabinet shall make a final determination on the petition within 180 days after its receipt.

(f) Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water shall not be storm-water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt, or runoff. Industrial materials or activities shall include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities shall include, but are not limited to, the storage, loading, unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge shall:

1. Provide a storm-resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;

2. Complete and sign, according to Section 9 of this administrative regulation, a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (b) of this subsection;

3. Submit the signed certification to the cabinet once every five years;

4. Allow the cabinet to inspect the facility to determine compliance with the “no exposure” conditions;

5. Allow the cabinet to make any “no exposure” inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm-resistant shelter. To qualify for this exclusion, storm-resistant shelter shall not be required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed

2. If the containers are not deteriorated, do not leak, and are not handled or otherwise secured and without operational tape or valves;

3. Adequately maintained vehicles used in material handling; and

4. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(a) Limitations.

1. Storm water discharge from construction activities defined in 401 KAR 6.002, Section 1, shall not be eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for a KPDES permit shall be available on a facility-wide basis only, and shall not be available for individual outfalls. If a facility has some discharges of stormwater that would otherwise be "no exposure" discharges, individual permit requirements shall be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, or runoff, the conditions for the exclusion shall not apply any longer. If that occurs, the discharge shall become subject to the requirements for stormwater discharge. Any conditionally exempt discharge who anticipate changes in circumstances shall apply for and obtain permit authorization prior to the change of circumstances.

4. Notwithstanding the provisions of this paragraph, the cabinet shall retain the authority to require permit authorization and deny this exclusion if the cabinet determines that the discharge causes, has a reasonable potential to cause, or contributes to an increase in concentrations above an applicable water-quality standard, including designated uses.

5. Certification. The no-exposure certification shall require the submission of the following information, at a minimum, to the cabinet for determining if the facility qualifies for the no-exposure exclusion:

1. The legal name, address, and phone number of the discharger, see Section 2(2) of this administrative regulation;

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification shall indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation;

4. Using, storing, or cleaning industrial machinery or equipment, and areas where residues from using, storing, or cleaning industrial machinery or equipment remain and are exposed to storm water;

5. Materials or residuals on the ground or in storm water inlets from spills, leaks;

6. Materials or products from past industrial activity;

7. Material handling equipment, except adequately maintained vehicles;

8. Materials or products during loading, unloading, or transporting activities;

9. Materials or products stored outdoors, except final products intended for outside use, e.g., new cars, if exposure to storm water does not result in the discharge of pollutants;

10. Materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers;

11. Materials or products handled, stored, or transported on roads or railways owned or maintained by the discharger;

12. Waste material, except waste in covered, nonleaking containers, etc., dumpsters;

13. Application or disposal of process wastewater, unleachable permitted, and

14. Particulate matter or visible deposits of residues from roof stacks, vents not otherwise regulated, i.e., under an air quality control permit, evident in the storm water outfall.

4. All no-exposure certifications shall include the following certification statement, and be signed in accordance with the signature requirements of Section 9 of this administrative regulation:

"I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from KPDES storm-water permitting, and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility classified in this certification, and not otherwise regulated under paragraph (a) of this subsection. I understand that I may be obligated to submit a no-exposure certification form once every five years to the cabinet and, if requested, to the operator of the local MS4 into which the facility discharge, where applicable. I understand that I shall show the cabinet or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publically available upon request. I understand that I shall obtain coverage under an KPDES permit prior to any point-source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly prepared and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
eau, if the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area shall be regulated; or
2. Designated by the cabinet, including where the designation is pursuant to 40 C.F.R. §123.35(b)(2) and (b)(4), or based upon a petition under subsection (b) of this section.

(b) Subject of a petition to the cabinet to require an NPDES permit for discharge of storm water. If the cabinet determines a permit is needed, then subsections (7) through (10) of this section shall apply.

(c) The cabinet may waive the requirements otherwise applicable in accordance with paragraph (6) or any of this subsection. A section waiver under this section may subsequently require coverage under a NPDES permit in accordance with subsection (b)(3) of this section. If circumstances change, see also 40 C.F.R. §123.35(b).

(d) The cabinet may waive permit coverage if the MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

1. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the MS4 storm water program, see 40 C.F.R. §123.36(b)(1); and
2. The system discharges any pollutant(s) that have been identified as a cause of impairment of any water body receiving the discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern, or if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern.

(e) The cabinet may waive permit coverage if the MS4 serves a population of 10,000 and meets the following criteria:

1. The cabinet has evaluated all waters of the Commonwealth, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;
2. For those waters, the cabinet has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern, or if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;
3. For the purpose of this paragraph, the pollutant(s) of concern shall include, but are not limited to, biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment such as total suspended solids, turbidity or eutrophication potential

(f) Application requirements for small MS4.

(a) Operators of a regulated small MS4 under subsection (7) of this section shall seek coverage under a NPDES permit issued by the cabinet.

(b) Authorization to discharge shall be under a general or individual NPDES permit, as follows:

1. For a general permit issued by the cabinet applicable to the discharge, the applicant shall submit a Notice of Intent (NOI) that includes the information on best-management practices and measurable goals required by subsection (5)(a) of this section. An individual NOI or joint NOI with other municipalities or governmental entities shall be submitted. Shared responsibilities for meeting the minimum measures with other municipalities or governmental entities shall be indicated on the NOI describing which minimum measures shall be implemented by each within the area served by the MS4. Coverage as a coterminous under a general permit by means of a joint Notice of Intent, shall require each MS4 to be substantially contributing to the impairment and within the jurisdiction of the cabinet. The cabinet may subsequently require coverage under a NPDES permit in accordance with subsection (b)(3) of this section if circumstances change, see also 40 C.F.R. §123.35(b).

2. Authorization to discharge under an individual permit to implement a program under subsection (9) of this section shall require submittal of an application to the cabinet that includes the information required under Section 17 of this administrative regulation and subsection (9)(c) of this section, an estimate of square-mile served by the small MS4, and any additional information that the cabinet requests. A storm water map that satisfies the requirements of subsection (b)(3) of this section shall satisfy the map requirement in Section 17(c)(6) of this administrative regulation.

3. Authorization to discharge under an individual permit to implement a program that is different from the program under subsection (9) of this section, shall require compliance with the permit application requirements of subsection (3) of the section. Both parties of the application requirements in subsection (3)(a) and (b) of this section shall be satisfied by March 10, 2003. Any application required by subsection (3)(a) and (b) of this section regarding legal authority shall not be required, unless the small MS4 intends for the permit writer to take that information into account when developing the other permit conditions.

4. If allowed by the cabinet, multiple entities may jointly apply under paragraph (3)(a) or (b) of the subsection to become coterminal under an individual permit. Coverage as a coterminous under an individual permit by means of a joint Notice of Intent shall require each MS4 to be subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in each respective jurisdiction except as set forth in subsection (10)(b) of this section.

5. If a small MS4 is in the same urbanized area as another MS4 with a KPDES permit, the cabinet may require the MS4 to participate in the storm water program. The entities may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited coterminous. As a limited coterminous, the small MS4 shall be responsible for compliance with the permit conditions applicable to its jurisdiction. Choice of this option shall require compliance with the permit application requirements of subsection (3), rather than the requirements of subsection (9) of this section. Compliance with the specific application requirements of subsection (3)(a) and (b) of this section (discharge characterization) shall not be required. The small MS4 may satisfy the requirements in subsection (3)(a)(5) and (b) of this section (identification of a management program) by referring to the other MS4's storm water management program.

(g) Operation of a regulated small MS4.

(a) Designated under subsection (7)(a) of this section, shall require coverage under a NPDES permit, or application for a modification of an existing NPDES permit, under paragraph (b) of the subsection by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the cabinet has established a phased schedule under 40 C.F.R. §123.36(c)(2).

(b) Designated under subsection (7)(b) of this section, shall require coverage under a NPDES permit, or application for a modification of an existing NPDES permit, under paragraph (b) of this subsection, within 180 days of notice, unless the cabinet grants a later date.

(c) Permit requirements for small MS4. The KPDES-MS4 permit shall require at a minimum the MS4:

1. To develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program shall include the minimum control measures described in paragraph (b) of this subsection unless the MS4 applies for a permit under subsection (9) of this section. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) may generally be the most appropriate form of effluent limitations if designed to satisfy technology requirements, including reductions of pollutants to the maximum extent practicable and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required in this subsection and the provisions of the permit required pursuant to subsection (8) of this section shall constitute compliance with the standard of reducing pollutants to the "maximum extent practicable." The cabinet shall specify a time period of up to five (5) years from the date of permit issuance for the MS4 to develop and implement the program.
(b) Minimum control measures:
1. Public education and outreach on storm water impacts—Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies, and the steps that the public can take to reduce pollutants in storm water runoff.
2. Public involvement/participation. At a minimum, comply with state- and local-public notice requirements when implementing a public involvement/participation program.
3. Illicit discharge detection and elimination—Develop, implement, and enforce a program to detect and eliminate illicit discharge as defined in 401 KAR 5.003 Section 1 into the small MS4 to include:
   - A storm sewer system map, showing the location of all outlets and the names and location of all waterways of the Commonwealth that receive discharges from those outlets;
   - To the extent allowable under state or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;
4. Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system;
5. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste and
6. Address the following categories of nonstorm water discharges:
   - Priority one, if they are identified as significant contributors of pollutants to the small MS4, storm water runoff, landscape irrigation, diverted stormwater, rainfall, or ground water;
   - Uncontaminated ground water infiltration as defined in 40 C.F.R. 36.006(b)(20), uncontaminated pumped ground water discharges from potable water sources, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space, water from seeps, water from lawns, and water from swimming pools discharges, and street wash water discharges or flows from fire fighting activities. These activities shall be excluded from the effective prohibition against nonstorm water and shall only be addressed if they are identified as significant sources of pollutants to waterways of the Commonwealth.
4. Construction site storm water runoff control.
   a. Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one (1) acre. Reduction of storm water discharges from construction activity disturbing less than one (1) acre shall be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one (1) acre or more.
   b. If the cabinet waives requirements for storm water discharges associated with small construction activity, the small MS4 shall not be required to develop, implement, or enforce a program to reduce pollutant discharges from those sites.
   c. The program shall include the development and implementation of:
      (i) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions, to ensure compliance, to the extent allowable under state or local law;
      (ii) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
      (iii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
      (iv) Procedures for site plan review that incorporate consideration of potential water quality impacts;
      (v) Procedures for receipt and consideration of information submitted by the public, and
      (vi) Procedures for site inspection and enforcement of control measures.
5. Postconstruction storm water management in new development and redevelopment.
   a. Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one (1) acre, including projects less than one (1) acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program shall ensure that controls are in place that would prevent or minimize water quality impacts;
   b. Develop and implement strategies which include a combination of structural or nonstructural best management practices (BMPs) appropriate for the community;
   c. Use an ordinance or other regulatory mechanism to address postconstruction runoff from new development and redevelopment projects to the extent allowable under state or local law, and
   d. Ensure adequate long-term operation and maintenance of BMPs.
6. Pollution prevention/good housekeeping for municipal operations.
   a. The small MS4 shall develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, or other organizations, the program shall include employee training to prevent and reduce storm water pollution from activities such as parks and open space maintenance, fleet and building maintenance, new construction and land disturbance, and storm water system maintenance.
   b. If an existing qualifying local program requires the implementation of one (1) or more of the minimum control measures of paragraphs (a)(1) through (a)(6) of this subsection, then the small MS4 shall be required to follow that program's requirements rather than the requirements of paragraph (a)(6) of this subsection. A qualifying local program shall be a local or state municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraphs (b) through (g) of this subsection.
   c. In the permit application, either a notice of intent or coverage under a general permit or an individual permit application, the small MS4 shall identify and submit to the cabinet the following information:
      a. The BMPs that the small MS4 or another entity will implement for each of the storm water minimum control measures at paragraphs (b) through (6) of this subsection;
      b. The measurable goals for each of the BMPs included, as appropriate, the months and years in which the responsible party will undertake required actions, including interim milestones and the frequency of the action; and
      c. The person or persons responsible for implementing, and coordinating, the storm water management program;
   d. If the small MS4 shall be required to meet any measurable goal(s) identified in the notice of intent in order to demonstrate compliance with the minimum control measures in paragraph (b) through (6) of this subsection unless, prior to submitting the NOI, EPA or the state has provided or issued a menu of BMPs that addresses each minimum measure. Even if no regulatory authority issues the menu of BMPs, the small MS4 shall comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.
   e. The small MS4 shall comply with any more stringent effluent limitations in the permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The cabinet may include more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.
   f. The small MS4 shall comply with other applicable KPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of 401 KAR 6.066 and 6.070, as appropriate.
   g. Evaluation and assessment.
      1. Evaluation—The small MS4 shall evaluate program compliance, the appropriateness of identified best management practices, and progress towards achieving identified measurable goals. The cabinet may determine monitoring requirements in accordance with state monitoring plans appropriate to a watershed.
2. Recordkeeping. The small MS4 shall keep records required by the KPDES permit for at least three (3) years. Records shall be submitted to the cabinet only if specifically asked to do so. Records, including a description of the storm-water management practices that may be made available to the public at reasonable times during regular business hours, see 400 KAR 1:00 for confidentiality provisions.

3. Reporting. Unless relying on another entity to satisfy the KPDES permit obligations under subsection (4)(a) of this section, the small MS4 shall submit annual reports to the cabinet for the first permit term. For subsequent permit terms, reports shall be submitted in years (3) and four (4) unless the cabinet requires more frequent reports. The report shall include:
   a. The status of compliance with permit conditions, an assessment of the appropriateness of identified best management practices and progress toward achieving identified measurable goals for each of the minimum control measures;
   b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
   c. A summary of the storm-water activities planned during the next reporting cycle;
   d. A change in any identified best management practices or measurable goals for any of the minimum control measures; and
   e. Notice of reliance on another governmental entity to satisfy some of the permit obligations, if applicable.

(10) Shared responsibilities for minimum control measures.
(a) The small MS4 may rely on another entity to satisfy the KPDES permit obligations to implement a minimum control measure if:
1. The other entity, in fact, implements the control measure;
2. The particular control measure, or component thereof, is at least as stringent as the corresponding KPDES permit requirement; and
3. The other entity agrees to implement the control measure on the small MS4 behalf. In the reports submitted under subsection (9)(g) of this section, the small MS4 shall also specify reliance on another entity to satisfy some of the permit obligations. If relying on another governmental entity regulated under this section to satisfy all of the permit obligations, including the obligation to file periodic reports required by subsection (9)(g) of this section, that fact shall be noted in the NOI and the small MS4 shall not be required to file the periodic reports. The small MS4 shall remain responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).
(b) In some cases, the cabinet may recognize, either in the individual KPDES permit or in an KPDES general permit, that another governmental entity is responsible under an KPDES permit for implementing one (1) or more of the minimum control measures for the small MS4 or that the cabinet itself is responsible if the cabinet does so, as defined in 401 KAR 6:002, are point sources subject to the KPDES permit program.

Section 13. Silvicultural Activities. Permit requirement. Silvicultural point sources, as defined in 401 KAR 6:002, are point sources subject to the KPDES permit program.

Section 14. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and have been adopted without change: The federal regulations are published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Rally Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) 40 C.F.R. 95.2(5)(vi), "Grants for Construction of Treatment Works, Definition, Infiltration," revised as of July 1, 2001;
(2) 40 C.F.R. 115.6, "Discharge of Oil, Notice Requirements," revised as of July 1, 2001;
(3) 40 C.F.R. 117.2, "Notice of Discharge of Reportable Quantity," revised as of July 1, 2001;
(4) 40 C.F.R. 122, "National Pollutant Discharge Elimination System," revised as of July 1, 2001;
(5) 40 C.F.R. 123.35, "Regulation of Small Municipal Separate Storm-Sewer Systems," revised as of July 1, 2001;
(6) 40 C.F.R. Part 135, "Guidelines Establishing Test Procedures for the Analysis of Pollutant," revised as of July 1, 2001;
(7) 40 C.F.R. Part 261, "Identification and Listing of Hazardous Waste," revised as of July 1, 2001;
(8) 40 C.F.R. Part 262, "Hazardous Waste, Pre-Transport Requirements, Accumulation Time," revised as of July 1, 2001;
(9) 40 C.F.R. Part 302.6, "Designation, Reportable Quantities and Notification, Notification Requirements," revised as of July 1, 2001;
(10) 40 C.F.R. Part 355, Appendix A, "The List of Extremely Hazardous Substances," revised as of July 1, 2001; and

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) KPDES Form A, DEP-7032, revised February 2002;
(b) KPDES Form A, DEP-7032A, revised February 2002;
(c) KPDES Form B, DEP-7032B, revised February 2002;
(d) KPDES Form C, DEP-7032C, revised February 2002;
(e) KPDES Short Form C, DEP-7032SC, revised February 2002;
(f) KPDES Form F, DEP-7032F, revised February 2002;
(2) The material may be inspected, copied, or obtained, subject to applicable copyright laws, at the KPDES Branch at the Division of Water, 14 Rally Road, Frankfort, Kentucky 40601, (502) 564-3410, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY "HANK" LESTER, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 a.m.

CONTACT PERSON: Administration, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Peter T. Goodmann
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for all KPDES permits and contains additional requirements for general and specific categories of discharges.
(b) The necessity of this administrative regulation: This regulation provides specific requirements for permitting discharges into waters of the Commonwealth. All KPDES delegated states must have compatible state regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.10-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.
(d) How this administrative regulation currently assists or will assist in the effective administration of the states: This regulation provides specific requirements for several categories of permits;
furthermore, the regulation references specific documents and
governing federal regulations relevant to the permitting process.

(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment will correct and update the regulation
to make it consistent with the corresponding federal regulations.
The proposed amendment affects six permit application forms
incorporated by reference in the existing regulation. These six
forms are Form 1, Form A, Form B, Form C, Form SC, and Form F.
The amendment references the most recent edition of the forms.
This amendment adds two forms: Form NE, and Form NDCAF0.
This amendment also revises ambiguous terms in accordance with
KRS Chapter 13A and provides federal citations and strikes
the federal language reproduced in the body of the state administrative
regulation. This amendment will also require Concentrated Animal
Feeding Operations (CAFOs) to submit a nutrient management plan
as part of a KPDES permit application. Amendments were
made after comments to insert effective dates for each of the cita-
tions to federal regulations.
(b) The necessity of the amendment to this administrative
regulation: It is necessary to amend this administrative regulation
to achieve compliance with federal regulations. If the administrative
regulation is not amended as proposed, it will continue to be in-consist-
tent with the corresponding federal regulations. The amendment
includes, by reference, the forms revised to comply with federal
regulations.
(c) How the amendment conforms to the content of the autho-
rizing statutes: KRS 224.10-100 authorizes the cabinet to issue,
continue in effect, revoke, modify, suspend or deny under such
conditions as the cabinet may prescribe, permits to discharge into
any waters of the Commonwealth. The proposed amendment
continues to provide for water pollution control as provided in KRS
Chapter 224.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment removes discrepancies be-
 tween current state and federal regulations. The amendment
will aid in carrying out the goals of KRS Chapter 224.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: This amendment affects individuals, businesses,
and organizations that are engaged in the regulated disposal of
treated wastewater under the KPDES permitting program. This
regulation affects over 10,000 existing permitted entities includ-
ing individuals, businesses and governmental organizations.
The amendment is expected to impact the following number of entities:
(a) Individuals: None. Individual family residencies do not file the
forms referenced in this regulation.
(b) Businesses: 1,600 per year, primarily through industrial
permits, non-public entity sanitary wastewater permits, and storm-
cwater coverage issuances.
(c) Organizations: 100 per year, primarily through individual
sanitary permits issued to nonprofit organizations such as
churches, summer camps, and private social or sporting clubs.
(d) State or Local Government: 30 per year, primarily through
permits for Public-Owned Treatment Works (POTW).
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: The regulated entities will have to submit
a revised version of an application form that they currently submit.
(b) In complying with this administrative regulation or amend-
ment, how much will it cost each of the entities identified in ques-
tion (3): Under this regulation, individuals, businesses, and organi-
izations are not expected to experience any additional cost. Be-
cause these requirements are already in federal regulations,
amending this regulation for consistency with federal regulations
will create no additional economic burden upon affected entities.
Concentrated Animal Farming Operations were required to create
a nutrient management plan prior to this amendment; therefore,
submittal of the plan as part of an application should be an insigni-
ificant additional cost.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The regulated community affected
by this regulation will not be confused by inconsistencies between
existing regulations and the updated federal regulations.
(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: No additional cost is anticipated.
(b) On a continuing basis: No additional cost is anticipated.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation? Exis-
ting permit fees, General Funds, and EPA Funds. This amendment
does not change any source of funding.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No additional
fees or funding are expected to support this amendment.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees:
This amendment does not directly or indirectly affect fees.
(9) TIERING: Is tiering applied? Permit requirements are tiered
based upon the nature and size of the wastewater discharge.

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 (includ-
ing cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government
 (including cities, counties, fire departments, or school districts) will
 be impacted by this administrative regulation? This regulation af-
 fects wastewater treatment systems that discharge to waters of the
 Commonwealth. This amendment affects all units of state or local
 government that have a KPDES discharge permit.
3. Identify each state or federal statute, order or regulation
 that requires or authorizes the action taken by the administrative
 regulation. The Clean Water Act and KRS Chapter 224
4. Estimate the effect of this administrative regulation on the
 expenditures and revenues of a state or local government agency
 (including cities, counties, fire departments, or school districts) for
 the first full year the administrative regulation is to be in effect.
 This regulation is expected to affect approximately thirty state or local
 government agencies per year as wastewater permits are issued
 or re-issued. Because these requirements are already in federal
 regulations, amending this regulation for consistency with federal
 regulations will create no additional economic burden upon state or
 local agencies.
(a) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
 fire departments, or school districts) for the first year? This
 amendment is not expected to impact revenue.
(b) How much revenue will this administrative regulation gen-
erate for the state or local government (including cities, counties,
 fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first
 year? No additional cost is expected.
(d) How much will it cost to administer this program for subse-
 quent years? No additional cost is expected.
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.
2. State compliance standards, KRS 224.18-050
3. Minimum or uniform standards contained in the federal
mandate. The federal standard requires that primacy states meet
or exceed the federal requirements for water pollution prevention
developed under the Clean Water Act, as Amended (33 U.S.C.

- 394 -
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

1251-1387.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.18-100, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 122, 129, 136, 137, (Chapter 4, Subchapter N) 401-471 (let-seq), 503, 33 U.S.C. 1251 - 1387, EO 2008-507, 2008-509, 1342


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [Environmental and Public Protection] Cabinet to issue, continue in effect, revoke, modify, suspend or deny under [subsection (a), effective July 1, 2008, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes [further-empowers] the cabinet to issue federal permits pursuant to 33 U.S.C.[Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C.[Section 1251-1387(let-seq)] subject to the conditions imposed in 33 U.S.C.[Section 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 - 1387, EO 2008-507 and 2008-508, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation establishes[see first] the conditions applicable to all KPDES permits[ KPDES permits] and the procedures for establishing and calculating permit conditions.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Federal Regulations. A KPDES permit limitation, standard, or condition shall be as established:

(a) 40 C.F.R. 122.41(c-1), effective July 1, 2008,

(b) 40 C.F.R. 122.42, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 29, 2008

(c) 40 C.F.R. 122.43, effective July 1, 2008

(d) 40 C.F.R. 122.44, effective July 1, 2008

(e) 40 C.F.R. 122.45, effective July 1, 2008

(f) 40 C.F.R. 122.46, effective July 1, 2008

(g) 40 C.F.R. 122.47, effective July 1, 2008

(h) 40 C.F.R. 122.48, effective July 1, 2008

(i) 40 C.F.R. 122.49, effective July 1, 2008

(j) 40 C.F.R. 122.50, effective July 1, 2008

(k) 40 C.F.R. 122.51, effective July 1, 2008

(l) 40 C.F.R. 122.52, effective July 1, 2008

(m) 40 C.F.R. 122.53, effective July 1, 2008

(n) 40 C.F.R. 122.54, effective July 1, 2008

(o) 40 C.F.R. 122.55, effective July 1, 2008

(p) 40 C.F.R. 122.56, effective July 1, 2008

(q) 40 C.F.R. 122.57, effective July 1, 2008

(r) 40 C.F.R. 122.58, effective July 1, 2008

(s) 40 C.F.R. 122.59, effective July 1, 2008

(t) 40 C.F.R. 122.60, effective July 1, 2008

(u) 40 C.F.R. 122.61, effective July 1, 2008

(v) 40 C.F.R. 122.62, effective July 1, 2008

(w) 40 C.F.R. 122.63, effective July 1, 2008

(x) 40 C.F.R. 122.64, effective July 1, 2008

(y) 40 C.F.R. 122.65, effective July 1, 2008

(z) 40 C.F.R. 122.66, effective July 1, 2008

Section 3. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

(1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Section 2 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer [substitute: cabinet has delegated authority to implement] the federal regulations cited in Section 2 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the authority to administer [substitute: cabinet has delegated authority to implement] a federal regulation cited in Section 2 of this administrative regulation has been delegated to the cabinet.

(4) The penalties established in KRS 224.09 010 shall be substitutes for the penalties established in 40 C.F.R. 122.41(a)(2); —661 In addition to applicable requirements for state permits established in 40 C.F.R. 122.43(b)(1), effective July 1, 2008, the requirements of interstate agencies shall be considered in applying KPDES permits issued by the cabinet. [Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to those administrative regulations shall be given in the permit. In addition to conditions required in all KPDES permits, the cabinet shall establish conditions as required on a case-by-case basis under Section 2 of this administrative regulation and 401 KAR 5:070.]

(4) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance shall constitute a violation of KRS Chapter 224, among which shall be the following remedies: enforcement action, permit revocation, revocation and reissuance, or modification, or denial of a permit renewal application.

(b) Specific duties.

(1) The permittee shall comply with all conditions of this permit. Any permit noncompliance shall constitute a violation of KRS Chapter 224, among which shall be the following remedies: enforcement action, permit revocation, revocation and reissuance, or modification, or denial of a permit renewal application.

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:600, Section 4.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permit activity in order to maintain compliance with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance shall include adequate operating parameters, controls, and appropriate quality assurance procedures. This provision shall require the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only if the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked, and/or rescinded, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation, and/or rescission, or a notice of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, revoking and/or rescinding, or revoking this permit, or to determine compliance with the permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and other documentation as may be required by law, to enter the permit property for the purpose of inspecting the permit property and to inspect any records required to be kept under the conditions of this permit.

(10) Access to records. The permittee shall provide access to any records that are required to be kept under the conditions of this permit.

(11) Inspection at reasonable times. Any facilities, equipment, in-
eluding-monitoring and control equipment, practices, or operations regulated or required under this permit, and
(b) Sample or monitor at reasonable times, for the purposes of ensuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.
(10) Monitoring and records.
(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original-stamp chart recordings for continuous-monitoring instrumentation, copies of all reports required by the permit, and records of all dates to control the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time.
(c) Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements;
2. The individual who performed the sampling or measurements;
3. The dates analyses were performed;
4. The individual who performed the analyses;
5. The analysis techniques or methods used; and
6. The results of the analyses.
(d) Monitoring shall be conducted according to test procedure approved under 40 C.F.R. Part 136; unless other test procedures have been specified in the permit.
(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.09-010(4).
(11) Signatory requirement. All applications, reports, or information submitted to the cabinet shall be signed and certified as indicated in 401 KAR 6:060, Section 8. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be subject to penalties under KRS 224.09-010(4).
(12) Reporting requirements.
(a) Planned changes. The permittee shall give notice to the cabinet as soon as possible of any planned physical alteration or additions to the permitted facility. Notice shall be required only if:
1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source under 401 KAR 5:060, Section 5, or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification only applies to pollutants which are subject either to effluent limitations in the permit, or to notification requirements under 401 KAR 6:060, Section 5.
(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
(c) Transfers. The permit shall not be transferable to any person except after notice to the cabinet. The cabinet may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements as may be necessary under KRS Chapter 224.
(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:
1. Monitoring results shall be reported on a Discharge Monitoring Report (DMR). Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported on a Discharge Monitoring Report (DMR).
2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 C.F.R. Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.
3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the cabinet in the permit.
(e) Compliance schedule. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each schedule date.
(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 6:015 and shall orally report any noncompliance which may endanger health or the environment within twenty-four (24) hours from the time the permittee becomes aware of the circumstance. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstance. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact date and time, and if the noncompliance has not been corrected the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which shall be reported within twenty-four (24) hours:
1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (2) of this section;
2. Any upset which exceeds any effluent limitation in the permit;
3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the cabinet in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this administrative regulation;
4. Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d) or (f) of the subsection, when monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.
(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the cabinet, it shall promptly submit these facts or information.
(13) Occurrence of a bypass.
(a) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. This type of bypass shall not be subject to the provisions of paragraphs (b) and (c) of this subsection.
(b) Notice. Prior to the operation of a bypass. If the permittee knows of the need for a bypass, it shall submit prior notice, if possible, at least twenty (20) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 6:015, Section 4.
(c) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subsection (12)(f) of this section, twenty-four (24) hours notice—Compliance with the requirement constitutes compliance with 401 KAR 6:015, Section 4.
(e) Prohibition of a bypass.
1. Bypassing shall be prohibited, and the cabinet may take enforcement action against a permittee for bypass, unless:
- The bypass was unavoidable to prevent loss of life, personal injury, or serious property damage;
- There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition shall not be satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- The permittee submitted notice as required under paragraph (b) of this subsection.
2. The cabinet may approve an unanticipated bypass, after considering its adverse effects, if the cabinet determines that it will
meet the three (3) conditions listed in subparagraph (a), (b), and (c) of this paragraph.

(14) Occurrence of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permits or limitations if the requirements of paragraph (b) of this subsection are met.

(b) Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the cause of the upset;
2. The permittee was at the time being properly operated;
3. The permittee submitted notice of the upset as required in subsection (12)(a) of this section; and
4. The permittee complied with any remedial measures required under subsection (4) of this section.

(c) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

(15) Additional conditions applicable to specified category of KPDES permits. The following conditions, in addition to others set forth in this administrative regulation, shall apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet as soon as it knows or has reason to know:

1. That any activity has occurred or will occur which would result in the discharge of a routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"
   a. 100 micrograms per liter (100 µg/l)
   b. 200 micrograms per liter (200 µg/l) for acrolein and acrylonitrile
   c. 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol
   d. One (1) milligram per liter (1 mg/l) for antimony
2. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5 060, Section 2(7);
3. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.

(b) POTW.
1. POTWs shall provide adequate notice to the cabinet of the following:
   a. Any new introduction of pollutants into that POTW from an indirect discharge which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or
   b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2: Establishing Permit Conditions. For the purpose of this section, permit conditions shall include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement that takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5 070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5 070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this subsection. In addition to the conditions established under Section 1(1) of this administrative regulation, each KPDES permit shall include conditions meeting the following requirements as applicable:

1. Technology-based effluent limitations and standards, new source performance standards, and pretreatment requirements and standards, as required by 40 C.F.R. Chapter I, Subchapter N (Part 435 et seq.), appear without change in Section 4 of this administrative regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5 080, Section 1(2) shall be included, as applicable. For new sources or new discharges, these technology-based limitations and standards shall be subject to the provisions of 401 KAR 5 080, Section 6(2)(a).
2. Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. When any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the cabinet shall institute proceedings under those administrative regulations to modify or revoke and rescind the permit to conform to the toxic effluent standard or prohibition.
3. Reopener clause. For any discharger within a primary industry category, as listed in Section 4(2) of this administrative regulation, requirements under the KPDES administrative regulations shall be incorporated as applicable, as follows:
   a. On or before June 30, 1986, all permittees that have not yet been promulgated, the permit shall include a condition stating that if an applicable standard or limit is performed by EPA and that standard or limit is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and rescinded to conform to such effluent standard or limit.
   b. After June 30, 1986, any permit issued shall include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 4(1)(b) of this administrative regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. Those permittees not included in this section shall include the reopener clause required by paragraph (a) of this subsection.
   c. The cabinet shall promptly modify or revoke and rescind any permit containing the clause required under paragraph (a) of the subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.
4. Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards shall be included, as necessary.
5. Achieve water quality standards established under KRS Chapter 224 and administrative regulations promulgated pursuant thereto, including any narrative criteria contained in 401 KAR 5 031.
6. Limitations shall control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the cabinet determines are or may be discharged at a level, which will cause, have the reasonable potential to cause, or contribute to an excessive dilution above any water quality standard, including narrative criteria for water quality.
7. If determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the cabinet shall use procedures which account for existing
controls on point-and nonpoint-sources-of pollution; the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing, if evaluating whole effluent toxicity, and if appropriate, the dilution of the effluent in the receiving water.

3. If the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentrations of a numeric criteria within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.

4. If the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a numeric criterion within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.

6. Except as provided in the subparagraph, if the cabinet determines, using the procedures in subparagraph 2 of this paragraph, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a numeric criterion within an applicable water quality standard, the permit shall contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity shall not be necessary if the cabinet demonstrates in the fact sheet or statement of basis of the KPDES permit, using the procedures in subparagraph 2 of this paragraph, that chemical criteria limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.

6. If 401 KAR 6-031 does not specify a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable water quality standard, the cabinet shall establish effluent limits for that pollutant using one (1) or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the cabinet demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. The criterion may be derived using administrative regulation interpreting the narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, September 1993, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

b. Establish effluent limits on a case-by-case basis, using water quality criteria listed in 401 KAR 6-031, supplemented if necessary by other relevant information;

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, if:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(ii) The fact sheet required by 401 KAR 5-075 sets forth the basic for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards, and

(iv) The permit contains a response clause allowing the cabinet to modify or revoke and rescue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. If developing water quality-based effluent limits under this paragraph the cabinet shall ensure that:

a. A level of water quality to be achieved by limits on point sources established under the paragraph is derived from, and compatible with, effluent discharge permits;

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the cabinet;

(c) Maintain or monitor a specified water quality through water quality-related effluent limits established under Section 302 of the Clean Water Act, or CWA, 33 U.S.C. Section 1312, and

(d) Conform to applicable water quality requirements if the discharge affects a state other than Kentucky;

(e) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state water-quality-administrative regulations or in accordance with Section 301(b)(13)(c) of CWA, 33 U.S.C. Section 1311(b)(13)(c).

(f) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA;

(g) Incorporate alternative effluent limitations or standards if warranted by "fundamentally different factors," under 401 KAR 6-080, Section 3.

Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of the subsection, shall be included in the permit, if applicable. Limitations shall be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations shall be included in the fact sheet under 401 KAR 6-076, Section 4.

(a) Limitations shall control all toxic pollutants which:

1. The cabinet determines, based on information reported in a permit application under 401 KAR 6-060, Section 2(7), or in a notification under Section 1(15)(b) of this administrative regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 6-080, Section 1(15)(b).

2. The discharge does or may use or manufacture as an intermediate or final product or by product.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection shall be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the cabinet, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 6-080, Section 1(15)(b).

(c) Notification level. A “notification level” which exceeds the notification level of Section 1(15)(b), 401 KAR 6-080, Sections 1(15)(a), (b), (c) of this administrative regulation, upon a petition from the permittee or on the cabinet's initiative shall be incorporated as a permit condition, if applicable. This notification level shall not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 6-080, Section 1(15)(a).

(d) Reporting of permits. For which the permits shall report violations of maximum daily discharge limitations, or Section 1(15)(a) of this administrative regulation, twenty-four (24) hour reporting shall be evidenced by the permit. The fact sheet shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(e) Monitoring requirements. The permit shall incorporate, as applicable in addition to Section 1(12) of this administrative regulation, the following monitoring requirements:

1. To ensure compliance with permit limitations, requirements to monitor:

(a) The mass, or other measurement specified in the permit, for each pollutant in the permit;

(b) The volume of effluent discharged from each outlet, and

(c) Other measurements as appropriate, including pollutants in internal waste streams, under Section 3(6) of the administrative regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of the administrative regulation; and

(f) According to test procedures approved under 40 CFR Part 136 for the analysis of pollutants having approved methods which are not final and final regulatory standards and according to a test procedure approved in the permit for pollutants with no approved methods.

(g) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but not less than once a year with the following exceptions:

1. Requirements to report monitoring results for storm water.
discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but not less than once a year.

2. Requirements to report results for storm-water discharges associated with industrial activity, other than those addressed in subparagraph 1. of this paragraph shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge shall require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm-water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm-water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three (3) years a record of results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. The report and certification be signed in accordance with 401 KAR 5:060, Section 9; and

d. Permits for storm-water discharges associated with industrial activity from inactive mining operations may, if annual inspections are impracticable, require certification once every three (3) years by a responsible person that the facility is in compliance with the permit, or alternative requirements.

3. Permits which do not require the submittal of monitoring and control reports at least annually shall require that the discharger report all instances of noncompliance not reported under Section 4(12)(a) of this administrative regulation at least annually.

4. Monitoring of discharges from construction activity, as identified in 401 KAR 5:002, Section 1, KPDES permit may include permit conditions that incorporate qualifying state or local erosion and sediment control program requirements by reference. If a qualifying state or local program does not include one (1) or more of the elements in the paragraph, then the KPDES shall include those elements as conditions in the permit. A qualifying state or local erosion and sediment control program shall be one that includes:

1. Requirements for construction-eto-operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction-eto-operators to control waste such as discarded building materials, concrete truck washout, concrete, soil, and sanitary waste at the construction site that may cause adverse impacts to water bodies. Requirements for construction-eto-operators to develop and implement a storm-water pollution prevention plan; a storm-water pollution prevention plan shall include site descriptions, descriptions of appropriate control measures, copies of approved state or local erosion and sediment control program requirements by reference. A qualifying state or local erosion and sediment control program shall be one that includes the elements listed in paragraph (a) of this subsection and any additional requirements necessary to achieve "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

5. Reused permits.

(a). Permits shall include a condition concerning reused permits, as applicable. If a permit is renewed or renewed, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit shall be incorporated into the new permit on which the previous permit was based. A renewed or substantially changed the time the permit was issued and would constitute cause to permit modification or revocation and reuse under 401 KAR 5:060, Section 6.

(b) For effluent limitations established on the basis of 401 KAR 5:060, Section 4(1)(b)(2), a permit shall not be renewed, revoked and replaced, or modified on the basis of effluent guidelines promulgated under CWA Section 304(b), 33 U.S.C. 1314(b), subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions. A permit to which paragraph (a) of the subsection applies may be renewed, revoked, or modified to contain a less stringent effluent limitation applicable to a pollutant if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. Information is available which was not available at the time of permit issuance, other than revised regulations, guidelines, or test methods, which would have justified the application of a less stringent effluent limitation at the time of permit issuance;

c. The cabinet determines that technical mistakes or mistakes interpretations of law were made in issuing the permit under 401 KAR 5:080, Section 1(2)(c)(2); or

(d) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy,
The permittee has received a permit modification under 401 KAR 5.065, Section 3; or

1. The permittee has installed the treatment facilities required to meet the effluent limitations in the permit which have been properly operated and maintained since installation, but has nevertheless been unable to achieve the permit's effluent limitations. If the permittee demonstrates that the permit limitations are technically infeasible, then the permittee may apply to the Director for a modification to the permit's effluent limitations.

2. Limitations. A permit to which paragraph (a) of this subsection applies shall not be renewed, renewed, reissued, or modified to contain less stringent effluent limitations than required by effluent limitations in effect at the time the permit was renewed, renewed, reissued, or modified. The permit to discharge into waters shall not be renewed, renewed, reissued, or modified to contain less stringent effluent limitations if the implementation of the limitation would result in a violation of a water quality standard under 401 KAR 5.031 applicable to those waters;

(12) Privately-owned treatment works. For a privately-owned treatment works, any conditions expressively applicable to any user, as a limited commoner, that may be necessary to the permit issued to the treatment works to ensure compliance with applicable requirements under this administrative regulation shall be imposed as applicable. Alternatively, the Department of Environmental Protection may issue separate permit(s) to the treatment works and to its users, or may require separate permits application from any user. The Department of Environmental Protection may issue separate permits for one or more users, to issue separate permits or to require separate applications, and the basis for that decision shall be stated in the fact sheet for the draft permit for the treatment works.

(14) Grants or loans. Any conditions imposed in grants or loan made by the cabinet to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations shall be required as applicable.

(16) Sludge. Requirements shall be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 40 C.F.R. Part 503.

(18) Coast Guard. If a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit shall be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretory of the Department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed as applicable.

(17) Navigation. Any conditions that the Secretary of the United States Army consider necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5.075, Section 9, shall be included as applicable.

(18) Duration of permits shall be imposed, as set forth in 401 KAR 5.070, Section 1.

Section 3. Calculating KPDPS Permit Conditions. The following provisions shall be used to calculate terms and conditions of the KPDPS permit.

(1) Outfall and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Section 2(10) of this administrative regulation, with BMPs if limitations are infeasible, and under subsection (8) of the seepage limitations on internal waste streams.

(2) Production-based limitations.

(a) For POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b) Except in the case of POTWs or as provided in subparagrah (a) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production.

The time period of the measurement of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

2. (e) The permittee may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated annual quantity of production during the year and maximum production capacity or decreased production levels.

(2) For the automotive manufacturing industry only, the permittee may establish a condition under subparagraph (2)(a) of this paragraph, if the permittee demonstrates to the satisfaction of the Director that the actual production, as indicated in subparagraph (2)(a) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

b. If the permittee establishes permit conditions under subparagraph (2)(a) of this paragraph:

(i) The permit shall require the permittee to notify the cabinet at least two (2) business days prior to the month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels shall be required to cover a period of production not connected by prior notice. If, during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit unless the permittee has notified the cabinet under subparagraph (2)(b) of this paragraph, then the permittee shall comply with the lowest level of production during each month or the level specified in the notice.

(c) The permittee shall submit the DMP the level of production actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(2) Metals. All permit effluent limitations, standards, and prohibitions for a metal shall be expressed in terms of the total recoverable metal as described in 40 C.F.R. Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or total or total form;

(b) The promulgating permit limitation is on a case-by-case basis under 401 KAR 5.065, Section 14(2), it is necessary to express the limitation on the metal in the dissolved or total form to carry out the provisions of KRS 224.16.060, or

(c) All approved analytical methods for the metal are inherently measure only its dissolved form (e.g., hexavalent chromium).

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable shall be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs;

(c) Noncontinuous discharges. Discharges which are not continuous, as defined in 401 KAR 5.002, Section 1, shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge; for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure; for example, shall not contain at any time more than one tenth (0.1) mg/l of zinc or more...
than 250 grams (0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement;

3. In establishing permit limitations on a case-by-case basis under 401 KAR 5.030, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharge of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(c) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water.

4. The applicable effluent limitations and standards contained in 40 C.F.R. Chapter I, Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or

5. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake water.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outlet or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The cabinet may waive this requirement if the cabinet finds that no environmental degradation will result.

(e) The subsection shall not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal waste streams.

(a) If permit effluent limitations or standards imposed at the point of discharge are impractical or impossible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(9) of this administrative regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams shall be imposed only if the fact sheet under 401 KAR 6.073, Section 4, lists forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the waste at the point of discharge are so diluted as to make monitoring impracticable, or the information among pollutants at the point of discharge would make detection or analysis impracticable.

(3) Disposal of pollutants into wells, into POTW, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 6.065, Section 6.

(d) Secondary treatment information. Permit conditions that involve secondary treatment shall be written as provided in 401 KAR 6.045.

Section 4. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES administrative regulations whether or not applicable effluent limitations guidelines have been promulgated.

(a) Adhesives and sealants

(b) Aluminum forming

(c) Auto and other laundries

(d) Battery manufacturing

(e) Coal mining

(f) Corrugating

(g) Copper forming

(h) Electrical and electronic components

(i) Electroplating

(j) Explosives manufacturing

(k) Foundries

(l) Gum and wood chemicals

(m) Inorganic chemicals manufacturing

(n) Iron and steel manufacturing

(o) Leather-tanning and finishing

(p) Mechanical products manufacturing

(q) Nonferrous metals manufacturing

(r) Ore mining

(s) Organic chemicals manufacturing

(t) Paint and ink formulation

(u) Petebedee

(v) Petroleum refining

(w) Pharmaceutical prepreations

(x) Photography equipment and supplies

(y) Plastics processing

(z) Plastic and synthetic materials manufacturing

(aa) Porcelain enameling

(bb) Printing and publishing

(cc) Pulp and paper mills

(dd) Rubber processing

(ee) Soap and detergent manufacture

(ff) Steam electro-power plants

(gg) Textile mills

(hh) Timber products processing

Section 5. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are published by the Ofice of the Federal Register, National Archives and Government Services, General Services Administration, and are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 401 Frank Robertson Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402:

(1) Waste Pollutant Effluent Standards, 40 C.F.R., Part 129, revised as of July 1, 2004;

(2) Test Procedures for the Analysis of Pollutants, 40 C.F.R., Part 136, revised as of July 1, 2001;

(3) Federal Effluent Limitations and Standards and New Source Performance Standards, 40 C.F.R., Chapter I, Subchapter N, revised as of July 1, 2004; and

(4) Standards for the Use or Disposal of Sewage Sludge, 40 C.F.R., Part 503, revised as of August 4, 1999.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Peter T. Goodmann
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation implements KRS 224 10-100 authorizing the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any
waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation establishes the permit requirements that are applicable to all dischargers and contains additional requirements for specific categories of dischargers.

(b) The necessity of this administrative regulation: KRS 224.16-050 authorizes the cabinet to implement the Federal Water Pollution Control Act of 1977 (Pub.L. 95-217). This regulation provides specific requirements for permitting discharges into waters of the Commonwealth. All NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.16-150 which authorizes the cabinet to Implement the Federal Water Pollution Control Act. This regulation is consistent with the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides specific requirements that are applicable to all dischargers, and contains requirements for specific categories of dischargers.

(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 clarifies that the cabinet will consider interstate agency standards when developing permit limitations. This amendment revises language to comply with the drafting requirements in KRS Chapter 13A. It also breaks the federal regulation narrative reproduced in the administrative regulation, instead using citations to the applicable federal regulations. This amendment will allow Concentrated Animal Feeding Operations (CAFOs) to implement a nutrient management plan based on a linear or narrative approach. A major change to a CAFO's nutrient management plan requires cabinet review of the nutrient management plan, and requires public notice with opportunity for comment. Amendments were made after comments to insert effective dates for each of the citations to federal regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment will correct and update the regulation to make it consistent with the corresponding federal regulations. This amendment clarifies that the cabinet will consider interstate agency standards when developing permit limitations. This amendment makes it clear that such limitations are required.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment conforms to KRS 224.18-100, which authorizes interstate environmental compacts.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies that the cabinet will consider interstate agency standards when developing permit limitations. The amendment will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations. After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities:

Individuals: The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.

Businesses: 1,600 per year, primarily through industrial permits, nonpublic entity sanitary wastewater permits, and stormwater coverage issuances.

Organizations: 100 per year, primarily through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.

State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to comply with permit conditions and limitations that may include standards adopted from interstate agencies. This change should cause very little additional impact.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations. The costs associated with amending this regulation to require the consideration of interstate standards should be insignificant because the standards of interstate agencies are not expected to be more stringent than existing state or federal standards. This amendment also makes changes to Concentrated Animal Feeding Operations (CAFOs). CAFOs were required to implement a nutrient management plan prior to this amendment pursuant to federal regulations; therefore, adding the choice of a linear or narrative approach to the nutrient plan should cause no additional cost. The ability to choose the best nutrient management approach should lead to less cost because of fewer modifications to the permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Regulated entities will not be confused by potential authority gaps arising between state and federal regulations as applied in interstate waters.

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

(a) Initially: No additional burden is anticipated.

(b) On a continuing basis: No additional burden is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.

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

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

(9) TIERING: Is tiering applied? The federal regulations provide tiered regulatory requirements through the Identification of classes of industrial users, through specific requirements of POTWs, and through requirements for specific categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user. This administrative regulation is tiered in the same way as the federal regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This regulation affects all units of state or local government that have a KPDES discharge permit. The proposed amendment affects only those who discharge into waters bordering other states.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS 224.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no change in cost.

(d) How much will it cost to administer this program for subsequent years? There will be no change in cost.

Note: If specific dollar estimations 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.

2. State compliance standards. KRS 224.16-050.

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primary states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as amended (33 U.S.C. 1251-1387). The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Admitted After Comments)

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-281, 224.70-100, 224.70-110, 40 C.F.R. 122.21, 122.29, 125.1, 125.2, 125.3, 125.10, 125.11, 125.33, 125.35, 125.70, 125.71, 125.72, 125.73. EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [Environmental-and Public Protection] cabinet to issue, change in effect, revoke, modify, suspend or deny under [such] conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes[provides] that the cabinet may issue federal permits pursuant to 33 U.S.C. [Section] 1342(b) of the Federal Water Pollution Control Act [33 U.S.C. Section] 1251-1387 (40 U.S.C. 1251-1387) subject to the conditions imposed in 33 U.S.C. [Section] 1342(b) and (d)and. The section further provides, that an exemption[any exemptions] granted in the issuance of a KPDES permit[permits] shall be pursuant to 33 U.S.C. [Section] 1311, 1312, and 1326(a).

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[reflects] the criteria and standards for the KPDES permitting system.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Criteria and standards for technology-based treatment standards shall be as established in:

(1) 40 C.F.R. 125.1, effective July 1, 2008;
(2) 40 C.F.R. 125.2, effective July 1, 2008; and
(3) 40 C.F.R. 125.3, effective July 1, 2008.

Section 3. Criteria for issuance of permits to aquaculture projects shall be as established in:

(1) 40 C.F.R. 125.10, effective July 1, 2008; and
(2) 40 C.F.R. 125.11, effective July 1, 2008.

Section 4. Criteria and standards for determining fundamentally different factors shall be as established in:

(1) 40 C.F.R. 125.30, effective July 1, 2008;
(2) 40 C.F.R. 125.31, effective July 1, 2008; and
(3) 40 C.F.R. 125.32, effective July 1, 2008.

Section 5. Criteria for determining alternative effluent limitations for the control of a thermal component of a discharge shall be as established in:

(1) 40 C.F.R. 125.70, effective July 1, 2008;
(2) 40 C.F.R. 125.71, effective July 1, 2008;
(3) 40 C.F.R. 125.72, effective July 1, 2008; and
(4) 40 C.F.R. 125.73, effective July 1, 2008.

Section 6. Special KPDES program requirements related to new sources and new discharges shall be as established in 40 C.F.R. 122.29, effective July 1, 2008.

Section 7. Criteria and Standards for Technology-based Treatment Requirements 1. Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements in KPDES permits including the application of EPA-promulgated-effluent limitations and case-by-case-determinations of effluent limitations.

(a) General. Technology-based treatment requirements represent the minimum level of control that shall be imposed in a KPDES permit. Permits shall contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

1. For POTW effluent limitations based upon:
   a. Secondary treatment as required by CWA Section 204(b)(1)(B) (33 U.S.C. Section 1342(b)(1)(B)) from date of permit issuance; and
   b. The best practicable waste treatment technology as required by CWA Section 301(a)(1)(A) (33 U.S.C. Section 1311(a)(1)(A)) not later than July 1, 1983; and
   c. For discharges other than POTWs, except as otherwise provided in the KPDES administrative regulations, effluent limitations requiring:
      (i) The best practicable control technology currently available (BPT);
      (ii) For effluent limitations promulgated under CWA Section
304(b) after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before the date, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989; or

(ii) For effluent limitations established on a case-by-case basis based on best professional judgment (BRJ) under paragraph (e)(2) of this subsection in a permit issued after February 4, 1987, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989; or

(iii) For all other BPT-effluent limitations, compliance is required from the date of permit issuance.

b. For conventional pollutants, the best conventional pollutant control technology (BCT).

(i) For effluent limitations promulgated under CWA Section 304(b) as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989; or

(ii) For effluent limitations established on a case-by-case basis based on BRJ under paragraph (e)(2) of the subsection in a permit issued after February 4, 1987, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989; or

(c) For all toxic pollutants referred to in Section 6 of the administrative regulation—best available technology economically achievable (BAT)

(i) For effluent limitations established under CWA Section 304(b) as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989; or

(ii) For permits issued on a case-by-case basis based on BRJ under paragraph (e)(2) of this subsection after February 4, 1987, establishing BAT-effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.

d. For all toxic pollutants other than those listed in Section 6 of this administrative regulation, effluent limitations based on BAT:

(i) For effluent limitations promulgated under CWA Section 304(b) compliance is required as expeditiously as practicable, but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989; or

(ii) For permits issued on a case-by-case BRJ basis under paragraph (e)(2) of this subsection after February 4, 1987, establishing BAT-effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.

e. For pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT:

(i) For effluent limitations promulgated under CWA Section 304(b) compliance is required as expeditiously as practicable, but not later than three (3) years after the date the limitations are established and not later than March 31, 1989; or

(ii) For permits issued on a case-by-case BRJ basis under paragraph (e)(2) of this subsection after February 4, 1987, establishing BAT-effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.

f. The following variance from technology-based treatment requirements is authorized by KRS Chapter 224 and may be applied for under 401 KAR 5.055. For dischargers other than POTWs:

a. Economic variance from BAT, as indicated in 401 KAR 5.055, Section 7(1)

b. Thermal variance from BPT, BCT, and BAT, under Section 4 of this administrative regulation, may be authorized.

2. An extension of the BAT deadline may be applied for under 401 KAR 5.055, Section 7(2) for dischargers other than POTWs for use of innovative technology.

(c) Methods of imposing technology-based treatment requirements:

1. Technology-based treatment requirements may be imposed through one (1) of the following three (3) methods:

a. Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where these determinations are not required to be reexamined by a court. Remanding the regulations in addition, dischargers may seek fundamentally different factors, variances from these effluent limitations under 401 KAR 5.055, and Section 3 of this administrative regulation.

b. On a case-by-case basis under CWA Section 402(a)(1) (33 U.S.C. Section 1342(a)(1)), to the extent that EPA-promulgated effluent limitations are inapplicable. The cabinet shall apply the appropriate factors listed in paragraph (d) of this subsection and shall consider:

a. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

b. Any unique factors relating to the applicant.

3. Through a combination of the methods in paragraphs (c) and (d) of this subsection. Where EPA-promulgated effluent limitations guidance only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to administrative regulation on a case-by-case basis in order to carry out the provisions of KRS Chapter 224.

4. Limitations developed under paragraph (e)(2) of this subsection may be expressed, where appropriate, in terms of toxicity. It is shown that the limits reflect the appropriate requirements of KRS Chapter 224.

(d) In setting case-by-case limitations pursuant to paragraph (e) of this subsection, the cabinet shall consider the following factors:

1. For BPT requirements:

a. The total cost of introduction of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Nonwater-quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of the pollutants from the discharger from publicly owned treatment works to the cost and level of reduction of the pollutants from a class or category of industrial source;

c. The age of equipment and facilities involved;

(d) The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Nonwater-quality environmental impact (including energy requirements).

3. For BAT requirements:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various types of control techniques;

d. Process changes;

e. The cost of achieving each effluent reduction; and

f. Nonwater-quality environmental impact (including energy requirements).

4. Technology-based treatment requirements are applied prior to or at the point of discharge.

5. Technology-based treatment requirements shall not be satisfied through the use of "nontreatment" techniques such as flow augmentation and in-stream mechanical-aeration. However, these techniques may be considered as a method of achieving water
quality standards on a case-by-case basis when:

1. The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;
2. The discharger agrees to waive any opportunity to request a variance under 401 KAR 6:06S, Section 3; and
3. The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards—after consideration of alternatives such as advanced waste treatment, re-use, land disposal, changes in operating methods, and other available methods.

(g) Technology-based effluent limitations shall be established under this administrative regulation for coals, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(h)(1) The cabinet may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollutant control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification where:

a. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or
b. (i) the limiting reflects BAT level control of discharges of one (1) or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutants is not feasible for economic or technical reasons;
   (ii) the permit identifies which toxic pollutants are intended to be controlled by this subsection and
   (iii) The fact sheet required by 401 KAR 6:07S, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT level control of the toxic pollutant discharges identified in paragraph (h)(1)(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutants.
2. The cabinet may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

a. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance, or
b. (i) the limiting reflects BAT level control of discharge, or an appropriate level of control of one (1) or more hazardous substances which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substances which are present in the waste stream, and a specific BAT or other appropriate level control of the hazardous substances discharges identified in paragraph (h)(1)(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the hazardous substances;
   (ii) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and
   (iii) The fact sheet, required by 401 KAR 6:07S, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT level, or other appropriate level control of the hazardous substances discharges identified in paragraph (h)(1)(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the hazardous substances.

c. Hazardous substances, which are also toxic pollutants, are subject to paragraph (h)(1) of this subsection.

4. Toxic pollutants identified under paragraph (h)(1) of this subsection remain subject to 401 KAR 6:06S, Section 4(1)(c), which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

4. Toxic pollutants identified under paragraph (h)(1) of this subsection remain subject to 401 KAR 6:06S, Section 4(1)(c), which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

Section 2—Criteria for Issuance of Permits to Aquaculture Projects. (1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under KRS Chapter 224 in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are KPDES permits and are subject to all applicable requirements. Any permit shall include such conditions, including monitoring and reporting requirements, as are necessary to comply with the KPDES administrative regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) KPDES permits shall not be issued to an aquaculture project unless:

1. The cabinet determines that the aquaculture project:
   (a) is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop, and
   (b) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.
   2. The applicant has demonstrated to the satisfaction of the cabinet, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area.

3. The applicant has demonstrated to the satisfaction of the cabinet, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species shall be at least equal to that of the displaced or affected indigenous flora and fauna.

4. The cabinet determines that the crop shall not have a significant potential for human health hazards resulting from its consumption.

5. The cabinet determines that migration of pollutants from the designated project area to waters of the Commonwealth outside of the KAR 6:06S, Section 4 project area will not cause or contribute to a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a preexisting mixing zone area beyond what had been designated for the original discharge.

(b) Permits shall not be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when among the designated project area.

Section 3—Criteria and Standards for Determining Fundamentally Different Factors. (1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations or pretreatment standards are substantially different from those required by promulgated EPA effluent limitations guidelines and categorical pretreatment standards, herein referred to as "national limits," shall be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes, or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits.

(b) This section applies to all national limits promulgated by EPA except for: (1) Pretreatment standards for steam-electric plants.

(c) This case-by-case review shall not be done unless data specific to that discharger indicate they present factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person asserting that factors relating to a discharger's facilities, equipment, processes, or other factors related to the discharger are fundamentally different from the factors considered during the development of the national limits may request a fundamentally different factors variance under 401 KAR 6:06S, Section 3. In addition, such a variance may be proposed by the cabinet in the draft permit.
this section, fundamentally different factors—variance, shall not be approved unless:
1. There is an applicable national permit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested;
2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits, and
3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of 401 KAR 5.075.

(b) A request for the establishment of effluent limitations lesser stringent than those required by national limits guidelines shall not be approved unless:
1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference;
2. The alternative effluent limitation or standard shall ensure compliance with the KPDES administrative regulations and KRS Chapter 224; and
3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternatives, would result in:
   a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or
   b. A nonwater-quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) A request for alternative effluent limitations more stringent than required by national limits shall not be approved unless:
1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and
2. Compliance with the alternative effluent limitation or standard would not result in:
   a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or
   b. A nonwater-quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(e) Factors which may be considered fundamentally different are:
1. The nature of or quality of pollutants contained in the raw waste load of the discharger's process wastewater;
2. The volume of the discharger's process wastewater and effluent discharged;
3. Nonwater-quality environmental impact of control and treatment of the discharger's raw waste load;
4. Energy requirements of the application of control and treatment technology.
   a. Medium, land availability, and configuration as they relate to the discharger's equipment or facilities, processes, personnel, process changes, and engineering aspects of the application of control technology; and
5. Cost of compliance with required control technology.
   (a) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:
     1. The infeasibility of installing the required waste treatment equipment within the time allowed in Section 1 of this administrative regulation;
     2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this subsection;
     3. The discharger's ability to pay for the required waste treatment or
     4. The impact of a discharge on local receiving water quality.
   (b) Method of application.
     (a) A written request for a variance under the administrative regulation shall be submitted in duplicate to the cabinet in accordance with 401 KAR 5.075.
     (b) The burden is on the person requesting the variance to demonstrate that:
1. Factors listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requestor shall refer to all relevant material and information, such as the published guidance, regulations, development documents, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation, including records of communication, etc., relevant to the regulations which are kept on public file by the EPA.

2. The alternative limitations requested are justified by the fundamental difference alleged in subsection (1) of this paragraph; and
3. The appropriate requirements of subsection (2) of this section have been met.

Section 4. Criteria for Determining Alternative Effluent Limitations (1) Purpose and scope of the criteria and standards for the establishment of alternative thermal effluent limitations described in CWA Section 316(a) (33 U.S.C. Section 1326(a)) shall also be used in KPDES permits and shall be referred to as 401 KAR 6.056, Section 7(4), variance.

(3) Early screening of applications for 401 KAR 6.056, Section 7(4), variance.
   (a) Any initial application for the variance shall include the following early screening information:
1. A description of the alternative effluent limitation requested;
2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;
3. A description of the general description of the type of data, studies, experiments, and other information, which the discharger intends to submit for the demonstration; and
4. Data and information as may be available to assist the cabinet in selecting the appropriate representative important species.
   (b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the cabinet concerning the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the cabinet's approval a detailed plan of study which the discharger will undertake to support its 401 KAR 6.056, Section 7(4), demonstration. The discharger shall specify the type and extent of the following type of information to be included in the plan of study: biological, hydrographical, and meteorological data, physical monitoring data, engineering or design, models, laboratory studies, representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species monitored in applicable water-quality standards. After the discharger submits its detailed plan of study, the cabinet shall either accept or reject the plan or make any necessary revisions to the plan. The discharger shall provide any additional information or studies which the cabinet subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger shall provide any additional information or studies which the discharger contends are appropriate to support the demonstration.

(c) Any application for the renewal of 401 KAR 6.056, Section 7(4), variance shall include only the information described in paragraphs (a) and (b) of this subsection and 401 KAR 5.076 as the cabinet requests within sixty (60) days after receipt of the permit application.

(d) The cabinet shall promptly notify the Secretary of the U.S. Department of Commerce, the Secretary of the U.S. Department of the Interior, and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making the demonstration.

(f) If an applicant desires a ruling on a 401 KAR 6.056, Section 7(4), application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the cabinet.

(3) Criteria and standards for the determination of alternative
effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the benefit of the cabinet that there are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, shall assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining if the protection and propagation of the affected species will be assured, the cabinet may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the administrator under CWA Section 304(c) (33 U.S.C. Section 1314(c)); or any other information it deems relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the intensity of surface normal component with other constituents and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of previous harm, the desired alternative effluent limitation or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.

(d) In determining if prior appreciable harm has occurred, the cabinet shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

Section 5. New Sources and New Dischargers. (1) Criteria for new source determinations. (a) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of "new source" in 401 KAR 5.001, and:

1. It is constructed at a site at which no other source is located;
2. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
3. It is constructed in a period of use or operation dependent on an existing source at the same site. In determining whether these processes are substantially independent, the cabinet shall consider factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(b) A source meeting the requirements of paragraph (a) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no independently applicable standard, the source is a new discharger. See 401 KAR 5.001.

(c) Construction on a site at which an existing source is located results in a modification subject to 401 KAR 5.070. Section 6 rather than a new source or a new discharger if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (a) of this subsection but otherwise, alters, replaces, or adds to existing process or production equipment.

(d) Construction of a new source as defined under 401 KAR 5.001 has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuing on-site construction program:
   a. Any excavation—assembly, or installation of facilities or equipment;
   b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment;
   2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time—Options to purchase or contracts which can be revoked or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

(e) When a KPDES permit issued to a source with a "protection period" under subsection (2)(a) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of Section 1 of the administrative regulation and CWA Section 304 (33 U.S.C. Section 1314) and any other then applicable CWA requirements immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed except when necessary to achieve compliance with requirements promulgated less than three (3) years before the expiration of the protection period.

(f) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1972, or a reconstructing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator shall meet all permit conditions. The requirements of this subsection do not apply if the owner or operator is issued a permit containing a compliance schedule under 401 KAR 5.001, Section 2(4).

(g) After the effective date of new source performance standards, no owner or operator shall operate the source in violation of those standards applicable to the source.

(2) Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve new performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subsection.

(a) Except as provided in paragraph (b) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards or to any more stringent technology based standards under CWA Section 304(b)(2) (33 U.S.C. Section 1311(b)(2)) for the shortest ending of the following periods:

1. Ten (10) years from the date that construction is completed;
2. Ten (10) years from the date the source begins to discharge process or other nonconstruction related wastewater.

(b) The protection from more stringent standards of performance afforded by paragraph (a) of this subsection does not apply to:

1. Additional or more stringent permit conditions which are not technology-based; for example, conditions based on water quality standards, or toxic-efluent standards or limitations under CWA Section 307(a) (33 U.S.C. Section 1317(a)); or
2. Additional permit conditions in accordance with 401 KAR 5.065, Section 2(6) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of those pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

Section 6. Toxic Pollutants. References throughout 401 KAR Chapter 6 [the KPDES administrative regulations, 401 KAR 6.002 through 6.056] establish [specify] requirements for discharges of toxic pollutants. Subsection (1) through (11) define (10) identify (6) list (1) those toxic pollutants that shall (required to) be considered for each of these KPDES requirements [1].

1. Acreathene.
2. Acrolein.
3. Acrylonitrile.
4. Atrin or dieldrin.
(5) Antimony and compounds.
(6) Arsenic and compounds.
(7) Asbestos.
(8) Benzene.
(9) Benzoic.
(10) Beryllium and compounds.
(11) Cadmium and compounds.
(12) Carbon tetrachloride.
(13) Chloride (technical mixture and metabolites).
(14) Chlordane benzenes (other than dichloro-benzenes).
(15) Chlornaphthenes (including 1,3-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane).
(16) Chloroalkyl ethers (including chloromethyl, chloroethyl, and mixed ethers).
(17) Chlorenated naphthalene.
(18) Chlorenated phenols (including other than those listed elsewhere; includes trichlorophenols and chlorinated cresols).
(19) Chlorofom.
(20) 2-Chlorophenol.
(21) Chromium and compounds.
(22) Copper and compounds.
(23) Cyanide.
(24) DDT and metabolites.
(25) Dichlorobenzenes (including 1,2-, 1,3-, and 1,4-dichlorobenzenes).
(26) Dichloromethane.
(27) Dichlorethylene (including 1,1- and 1,2-dichlorethylene).
(28) 2,4-Dichlorophenol.
(29) Dichloropropane and dichloropropene.
(30) 2,4-Dimethylphenol.
(31) Dinitrotoluene.
(32) Diphenylhydrazine.
(33) Endosulfan and metabolites.
(34) Endrin and metabolites.
(35) Ethylbenzene.
(36) Fluoranthene.
(37) Haloehers (other than those listed elsewhere; including [includes] chlorophenylphenyl ether, bromophenylphenyl ether, bis(dichloroaryl) ether, bis(chloroethoxy) methane, and polychlorinated diphenyl ethers).
(38) Halomethanes (other than those listed elsewhere; including [includes] methane chloride methyl chloride, methyl bromide, bromofom, dichlorobromomethane, trichlorofluoromethane, and dichlorodifluoromethane).
(39) Hexachlorobutadiene.
(40) Hexachlorocyclohexane (all isomers).
(41) Hexachlorocyclopentadiene.
(42) Isophorone.
(43) Lead and compounds.
(44) Mercury and compounds.
(45) Naphthalene.
(46) Nickel and compounds.
(47) Nitrobenzene.
(48) Nitrobenzene (including 2,4-dinitrophenol and [J dinitrocresol).
(49) Nitrophenols.
(50) Nitrobenzene.
(51) Pentachlorophenol.
(52) Phenol.
(53) Phthalate esters.
(54) Polychlorinated biphenyls (PCBs).
(55) Polynuclear aromatic hydrocarbons (including benzenes, benzopyrenes, benzofluoranthene, chrysene, dibenzanthracenes, and indenopyrenes).
(56) Selenium and compounds.
(57) Silver and compounds.
(58) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).
(59) Tetrachloroethylene.
(60) Thallium and compounds.
(61) Toluene.
(62) Toxaphene.
(63) Trichloroethylene.
(64) Vinyl chloride.
(65) Zinc and compounds.
(66) The term "compounds" shall include organic and inorganic compounds.

Section 8 The level of effluent quality attainable through the application of secondary or equivalent treatment shall be as established in:
1. [40 C.F.R. 133.100, effective July 1, 2006;]
2. [40 C.F.R. 133.101, effective July 1, 2006;]
3. [40 C.F.R. 133.102, effective July 1, 2006;]
4. [40 C.F.R. 133.103, effective July 1, 2008;]
5. [40 C.F.R. 133.104, effective July 1, 2008;]
6. [40 C.F.R. 133.105, effective July 1, 2008.]

Section 9 Modifications, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the United States" shall be modified to "Waters of the Commonwealth" in the federal regulations cited in Sections 1 through 8 of this administrative regulation; (2) "Director" shall be modified to "cabinet" if the authority to administer [cabinet has delegated authority]; the federal regulations cited in Sections 1 through 8 of this administrative regulation has been delegated to the cabinet.
(3) "NPDES" shall be modified to "KPDES" if the authority to administer [cabinet has delegated authority] in the federal regulations cited in Sections 1 through 8 of this administrative regulation has been delegated to the cabinet.
(4) The notification requirements related to applications for a thermal variance shall be modified to add the notification of interstate agencies in 40 C.F.R. 125.72(d), effective July 1, 2009.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Peter T. Goodman
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the criteria and standards for the KPDES permitting system and provides that any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a).
(b) The necessity of this administrative regulation: KRS 224.16-050 authorizes the Cabinet to implement the Federal Water Pollution Control Act of 1977 (Pub.L. 95-217). This regulation provides specific requirements for permitting discharges into waters of the Commonwealth. All NPDES delegated states must have compatible state regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes. This regulation conforms to KRS 224.16-150 which authorizes the Environmental and Public Protection Cabinet to implement the Federal Water Pollution Control Act of 1977 (Pub.L. 95-217). This regulation is consistent with the pollution prevention goals of KRS Chapter 224.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the administration of KRS 224.16-050 by providing specific standards, criteria, schedules of compliance, and requirements for variances.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the regulation will change this existing administrative regulation: This amendment will clarify that the cabinet must notify interstate agencies of a variance to permit limitations. This amendment further clarifies secondary treatment standards for publicly owned treatment works by explicitly citing the standards rather than referring to the Clean Water Act sections from which the standards are derived. This amendment also revises ambiguous terms in accordance with KRS Chapter 13A, provides federal citations, and strikes the federal language reproduced in the body of the state administrative regulation. Amendments were made after comments to
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

insert effective dates for each of the citations to federal regulations.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to clarify that the cabinet shall notify an interstate agency of variances proposed by the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150 which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment conforms to KRS 224.18-100 authorizing interstate environmental compacts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies that the cabinet has responsibility to notify an interstate agency of proposed variances.

(e) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

   a. Individuals: The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.
   
   b. Businesses: 1,600 per year, primarily through industrial permits.
   
   c. Non-public entity sanitary wastewater permits.
   
   d. State and Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

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

   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to comply with permit conditions and limitations of interstate agencies. This change should cause very little additional impact because Kentucky's standards are typically more stringent than or as stringent as interstate agency standards.

   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no expected increase in cost to those entities identified in question (3).

   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be subject to potential authority gaps arising between state and federal regulations as applied in interstate waters, nor will there be confusion about the responsibility of the cabinet to notify interstate agencies of variances proposed by the cabinet.

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

   (a) Initially: No additional burden is anticipated
   
   (b) On a continuing basis: No additional burden is anticipated.

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.

(i) 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 fee or funding increases will be necessary because of this amendment.

(j) Whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.

(k) Tiering: Is tiering applied? The federal regulations provide tiered regulatory requirements through the identification of classes of industrial users, through specific requirements of POTWs, and through requirements for specific categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user. To the extent that corresponding federal regulations provide for tiering, these amendments are tiered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all units of state or local government that have a KPDES discharge permit. The portion of the proposed amendment related to notification of interstate agencies affects only those who discharge into waters bordering other states.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224.

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

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

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

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

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

   (e) 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.


2. State compliance standards.

   KRS 224.16-050, 224.18-100.

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primary states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amended After Comments)

401 KAH 8:275. Consumer confidence reports.


STATUTORY AUTHORITY: KRS 224.10-100(28). 224.10-

- 409 -
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

110[71i], 40 C.F.R. 141.151-141.155, 42 U.S.C. 300f-300j-26, EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-400(30) and 224.10-110(2) and (3) require [authorize] the Secretary of the Cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the requirements for consumer confidence reports. This administrative regulation establishes requirements different from the federal regulation for submitting reports and certifications to the cabinet in enforceable timeframes. The federal regulation requires reports to be mailed to the cabinet at the same time the report is delivered to the customers, and the certification is required to be submitted to the cabinet within three (3) months. This administrative regulation requires that the report and certification be delivered to be [received] by the cabinet by July 1 of each year (within fourteen (14) days of delivery to the customer).

Section 1. (1) A community water system shall submit an annual consumer confidence report to its customers and to the cabinet in accordance with 40 C.F.R. 141.151, 141.152, 141.153, [and] 141.155, including Appendix A, and 141.154, effective July 1, 2007, except as provided in subsection (2) of this section.

(2) A copy of the annual report and certification required by 40 C.F.R. 141.155, effective July 1, 2007, shall be delivered to the cabinet and the system’s customers by July 1 each year.

(a) Not later than fourteen (14) days after the date a community water system is required by 40 C.F.R. 141.155(s), effective July 1, 2007, to deliver the report to the system’s customers; or

(b) Not later than fourteen (14) days of publication if a system serving fewer than 10,000 persons publishes the report in a local newspaper in accordance with 40 C.F.R. 141.155(s), effective July 1, 2007.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY, July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 a.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-5410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann
(1) Provide a brief summary of.
(a) What this administrative regulation does: This administrative regulation requires public water systems to annually report to its customers information on the quality and nature of the water they deliver to the customers and on the public system’s compliance with national primary drinking water regulations. This administrative regulation is pursuant to the Safe Drinking Water Act.
(b) The necessity of this administrative regulation: Reports to the public allow public water systems to keep their customers informed of issues relevant to the system’s operation.
(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
(d) How this administrative regulation currently assesses or will assist in the effective enforcement of the statutes. Consumer confidence reports allow consumers to stay abreast of issues pertaining to their drinking water.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates a federal citation, 40 C.F.R. 141.154.
(b) The necessity of the amendment to this administrative regulation. The additional federal regulation was omitted in the previous revision and is necessary for the state to obtain primacy for the drinking water program.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendment to this administrative regulation is necessary for the state to obtain primacy from EPA to enforce these regulations.
(d) How the amendment will assist in the effective administration of the statutes: The additional federal regulation clarifies that reports on drinking water must contain federally mandated language pertaining to health information.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation applies to 481 public water systems.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The administration clarifies that the entity must comply with 40 C.F.R. 141.154, which requires reporting to include health information.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The costs of complying with this administrative regulation remain unchanged.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Public water systems will benefit by being in compliance with federal requirements.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Costs of implementation will remain the same.
(b) On continuing basis: Costs of implementation will remain the same.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The drinking water program is funded by federal funds provided to administer the requirements of the Safe Drinking Water Act.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase fees.
(9) TIERING: Is tiering applied? Yes This administrative regulation applies to requirements for community water systems, noncommunity water systems, and systems of different size, as required by the federal regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to public water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation? KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification
of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 42 U.S.C. 300f through 303-26 requires the establishment of national primary drinking water regulations. 40 C.F.R. 141 Subpart O, 141.1 through 141.155, including Appendix A, requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customer and on the public water system's compliance with national primary drinking water regulations.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for the first year.

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

(c) How much will it cost to administer this program for the first year? The amendments to this administrative regulation will not impose any additional cost for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendments to this administrative regulation will not impose any additional cost in subsequent years.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Chapter 6A, Subchapter XII, The Safe Drinking Water Act, and 40 C.F.R. 141 Subpart O, Sections 141.1 through 141.155, including Appendix A.

2. State compliance standards. KRS 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. Chapter 6A, Subchapter XII, The Safe Drinking Water Act, and 40 C.F.R. 141 Subpart O, Sections 141.1 through 141.155, including Appendix A, requires public water systems to annually report to its customers information on the quality and nature of the water the system is delivering to the customer and on the public water system's compliance with national primary drinking water regulations established pursuant to the Safe Drinking Water Act.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The amendment to this regulation does not introduce any requirements more stringent than the federal regulation. However, the existing regulation does contain a requirement that differs from the federal regulation, and that requirement is not changing. The federal regulation requires that a copy of the consumer confidence report be "mailed" to the cabinet at the same time that the report is delivered to the water system's consumers. A certification that information in the report is correct must be submitted to the cabinet within three months. This regulation requires that both the report and the certification shall be received by the cabinet within 14 days after the report is delivered to the customers.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 40 C.F.R. 141.155(c) requires public water systems to mail the consumer confidence report to the primary agency at the same time as the public water system delivers the report to its customers, and requires certification of the reports accuracy within three months of that time. This administrative regulation requires that the cabinet receive the report within fourteen days of the report being delivered to the water system's consumers. Since the certification simply is a statement that the report is accurate, which they are required to be, the cabinet considers the requirement that the certification be received in the same time period to be reasonable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 8:00. Secondary standards.

RELATES TO: KRS 224.10-100(28), 224.10-110(Chapter 224), 40 C.F.R. [Part] 143, EO 2008-507, 2008-531(46989)

STATUTORY AUTHORITY. KRS 224.10-100, 224.10-110, 40 C.F.R. [Part] 143(4698), 42 U.S.C. [A] 300f, 300g, 300

NECESSITY, FUNCTION, AND CONFORMITY. KRS 224.10-110 requires that the cabinet to enforce the administrative regulations adopted by the secretary for the administrative 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. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act amendment of 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising primary enforcement responsibility. This administrative regulation establishes [provides] maximum contaminant levels and requirements for the sampling and testing for contaminants that do not have a direct impact on the health of consumers, but may discourage the utilization of drinking water or discredit the supplier[supply].

Provisions for these contaminants are referred to as "secondary standards." This administrative regulation establishes sampling schedules and requires public water systems to modify treatment to comply with maximum levels established [set] by the federal regulation. Federal regulations leave monitoring frequency and consequences for exceeding secondary standards to primary agency discretion. This administrative regulation conforms to, and is no more stringent than, federal regulations.

Section 1. Sampling, Analysis, Reporting, and Treatment for Secondary Contaminants (1) [Applicability—All supplies of water for public and semipublic drinking water system that treats groundwater or surface water system shall sample for secondary contaminants in accordance with 40 C.F.R. 143.1 through 143.4, with the following additions [at the discretion of the cabinet]:
(a) [New source of water—An analysis for secondary contaminants shall be performed when a new source of water is proposed for the cabinet for preliminary approval pursuant to 401 KAR 8:100, Section 1. Excessive amounts of these contaminants or excessive costs for their removal shall may be grounds for rejection of the proposed source of water;]
(b) [New source of water—An analysis for secondary contaminants shall be performed when a new source of water is proposed for the cabinet for preliminary approval pursuant to 401 KAR 8:100, Section 1. Excessive amounts of these contaminants or excessive costs for their removal shall may be grounds for rejection of the proposed source of water;]
(c) [New source of water—An analysis for secondary contaminants shall be performed when a new source of water is proposed for the cabinet for preliminary approval pursuant to 401 KAR 8:100, Section 1. Excessive amounts of these contaminants or excessive costs for their removal shall may be grounds for rejection of the proposed source of water;]
(d) [New source of water—An analysis for secondary contaminants shall be performed when a new source of water is proposed for the cabinet for preliminary approval pursuant to 401 KAR 8:100, Section 1. Excessive amounts of these contaminants or excessive costs for their removal shall may be grounds for rejection of the proposed source of water;]
(e) [New source of water—An analysis for secondary contaminants shall be performed when a new source of water is proposed for the cabinet for preliminary approval pursuant to 401 KAR 8:100, Section 1. Excessive amounts of these contaminants or excessive costs for their removal shall may be grounds for rejection of the proposed source of water;]
move federal language from the state regulation and substitute federal citations. Decisions about how often monitoring for secondary standards shall take place, and what will happen if standards are exceeded, which the federal regulation leaves to state primary agency discretion, are set forth in this regulation.

(b) The necessity of the amendment to the administrative regulation: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendments to this regulation remove federal language from the state regulation and substitute federal citations instead. This will assist in adopting changes to federal monitoring and analytical requirements for secondary standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendments to this regulation remove federal language from the state regulation and substitute federal citations for secondary contaminant standards.

(d) How the amendment will assist in the effective administration of the statutes: Secondary contaminants are contaminants that, while they may not pose a public health threat, may pose the consumption of the water unpleasant and cause consumers to avoid using the public water system. Control of these contaminants will assist public and semipublic water systems in maintaining high customer satisfaction with the quality of the water.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects 482 public and 52 semipublic water systems.

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

(a) List the actions that each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment: Public and semipublic water systems shall monitor for secondary contaminants annually, or when customer complaints indicate such contaminants are present. Systems that exceed secondary maximum contaminant levels may have to change treatment or sources of water to comply with standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Monitoring costs for secondary contaminants are approximately $275 per set of samples. Costs for treatment of secondary contaminants will vary, but could range from the cost of a chemical feed pump and drum of chemical product to the installation of full treatment or the development of a new water source.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit from working with the cabinet to meet these requirements as opposed to having to answer to the U. S. Environmental Protection Agency. Secondary contaminants are contaminants that, while they may not pose a public health threat, may make consumption of the water unpleasant and cause consumers to avoid using the public water system. Control of these contaminants will assist public and semipublic water systems maintain a high level of customer satisfaction with the quality of the water.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: (a) Initially: The cabinet already requires this monitoring No additional cost will be realized.

(b) On a continuing basis: There will be no additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet uses federal water grants to carry out the provisions of the Safe Drinking Water Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change. If it is an amendment: No additional fees or funding will be necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or directly or indirectly increased by the provisions of this administrative regulation.

(9) TIERING: Is tiering applied? Yes. This regulation varies requirements between public and semipublic water systems.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to public water systems using surface water or groundwater as a source. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 40 C.F.R. 143 establishes guidelines for water systems to monitor for secondary contaminants.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this regulation.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this regulation in subsequent years.
   (c) How much will it cost to administer this program for the first year? The cabinet already carries out the requirements of this administrative regulation. No additional cost will be realized.
   (d) How much will it cost to administer this program for subsequent years? No additional cost will be realized.

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

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

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 143.1 through 143.4
2. State compliance standards. KRS 224.10-100(28), 224.10-110(2)
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 143 establishes guidelines for public water systems and states to carry out monitoring for secondary contaminants in public water systems.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The amendment to this administrative regulation does not introduce any requirement more stringent than the federal regulation. However, this administrative regulation establishes more specific rules. Although this administrative regulation follows guidance set forth in the federal regulation, the specific monitoring frequencies, and consequences for exceeding maximum secondary contaminant levels, left by the federal regulation to the discretion of the state party agency, are set forth in this administrative regulation. This regulation also extends to semipublic systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Public and semipublic water systems will benefit from knowing specifically what monitoring will be required and what consequences will be faced if secondary maximum contaminant levels are exceeded. In addition, public and semipublic water systems will benefit from assuring their customers a high quality of pleasing, safe water.
PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 2009

PERSONNEL CABINET

(Admonment)

101 KAR 2:066. Certification and selection of eligible applicants for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.150, 18A.165

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

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

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

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

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

(a) If one (1) position is involved, the secretary shall certify the names of:
   1. Each applicant who:
      a. Applied for the vacant position; and
      b. If it is a tested position, has a score included in the highest five (5) scores earned through the selection method; and
   2. All internal mobility candidates who are eligible and have applied for the vacant position.

(b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.

(c) Each appointment shall be made from:
   1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or
   2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable.

(2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Veterans' Preference. (1) The following individuals shall qualify for veterans' preference once a discharge certificate is submitted to the secretary which verifies honorable service and:

(a) Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge;
(b) Any current member of the active military, military reserves, or National Guard.

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

(d) The spouse of a veteran with a service-connected disability shall be entitled to Veterans' Preference until the date the disabled veteran recovers:
   (d) A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and if the veteran:
      1. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
      2. Became permanently and totally disabled as a result of a disability sustained during the veteran's service; or
   (e) The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge, including the surviving spouse of any military personnel who died while serving in the military.
      1. The surviving spouse shall be entitled to Veterans' Preference until the date of remarriage.
      2. The surviving spouse shall not be entitled to Veterans' Preference if circumstances surrounding the death of the veteran while in the Armed Forces would have caused a Dishonorable Discharge.

(2) For all tested classified positions, Veterans' Preference shall be awarded by providing additional points to the entrance examination scores, once the secretary has determined the score is a passing score and has verified the required service.

(a) The following individuals shall receive five (5) additional points on entrance examination scores, but not exceeding one hundred (100) total points:
   1. Any person who has served in the active military, military reserves, or National Guard and was discharged or released with an Honorable Discharge; or
   2. Any current member of the active military, military reserves, or National Guard.
   (b) The following individuals shall receive ten (10) additional points on entrance examination scores, but not exceeding one hundred (100) total points:
   1. The spouse of a veteran who served in the active military, military reserves, or National Guard if the veteran:
      a. Was discharged or released with an Honorable Discharge; and
      b. Has a service-connected disability which disqualifies the veteran from performing the duties of a position in the veteran's usual occupation at the time the spouse's application is filed.
   2. A parent totally or partially dependent on a person who has served in the active military, military reserves, or National Guard and if the veteran:
      a. Lost his or her life under honorable conditions while on active duty or active duty for training purposes; or
      b. Became permanently and totally disabled as a result of a disability sustained during the veteran's service; or
   3. The surviving spouse of a person who has served in the active military, military reserves, or National Guard who was discharged or released with an Honorable Discharge.
   (3) For all non-tested classified positions, Veterans' Preference shall be awarded by the following:

(a) Upon receipt of a request for a register, the secretary shall submit to the appointing authority the register certificate which lists all eligible applicants who meet the minimum requirements for the position. The certificate shall identify the names of eligible applicants, including internal mobility candidates, who have applied for the position and are entitled to Veterans' Preference.
   (b) The appointing authority shall offer an interview to at least five (5) of the individuals listed on the register certificate who qualify for Veterans' Preference and may offer an interview to additional candidates on the register certificate who do not qualify for
Veterans' Preference.

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

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

Section 4(3). Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

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

Section 5(4). Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 7, 2009
FILED WITH LRC: July 18, 2009 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2009 at 10 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Daniel F. Egbers, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Daniel F. Egbers

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary for the effective and proper certification and selection of eligible applicants for appointment to state positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation presently assists or will assist in the effective administration of the statutes: This regulation presently establishes the requirements for certification and selection of eligibles for appointment.

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

(a) How the amendment will change this existing administrative regulation: The amendment supersedes a provision of the system of Veterans' Preference in state hiring and includes the manner to award preference for non-tested, qualifying positions. The amendment is necessary to ensure that veterans and certain family members are rewarded veterans for hardship endured and to recognize the economic loss suffered while serving our Nation in uniform.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide preference for non-tested, qualifying positions. The practice of providing veterans an additional opportunity to be interviewed and considered for state employment should be promoted and adhered to by all agencies. This amendment must be codified to supplement KRS 18A.150.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110(l)(b) and (7). In addition, it conforms with KRS 18A.150, which is the statutory authority currently in place for implementation of a system of Veterans' Preference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the guidelines by which the Personnel Cabinet shall clearly identify and supply to employing agencies and cabinets the individuals who are entitled to receive Veterans' Preference, as well as codify the process by which Veterans' Preference will be implemented in state hiring. This clarifies the process by which KRS 18A.150 will be effectuated.

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

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

List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Veteran applicants are required to submit documentation which verifies their veteran status. The Personnel Cabinet is responsible for notifying the appointing authority of an individual who is entitled to Veterans' Preference, and shall indicate this qualification on the register certificate. Employing agencies are required to then offer an interview to a set number of individuals who are entitled to receive Veterans' Preference.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is proper and fitting that the Commonwealth of Kentucky assist those who forfeited their career opportunities and suffered economic loss while providing military service. Kentucky will be encouraging the practice of hiring veterans and employing veterans in the state workforce, which is beneficial for the Commonwealth as well as the individual veterans.

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

(a) Initially: his regulation, as amended, is not anticipated to generate any new or additional costs.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.
VOLUME 36, NUMBER 2 - AUGUST 1, 2009

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

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

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the Veterans' Preference program.

(d) How much will it cost to administer this program for subsequent years? There is no estimated cost in the administration of the Veterans' Preference program.

PERSONNEL CABINET

(Amendment)

101 KAR 2:102. Classified leave administrative regulations.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Annual Leave Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>1 leave day per month; 12 per year</td>
</tr>
<tr>
<td>60-119 months</td>
<td>1 1/4 leave days per month; 15 per year</td>
</tr>
<tr>
<td>120-179 months</td>
<td>1 1/2 leave days per month; 18 per year</td>
</tr>
<tr>
<td>180-239 months</td>
<td>1 3/4 days per month; 21 per year</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>2 leave days per month; 24 per year</td>
</tr>
</tbody>
</table>

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Maximum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-59 months</td>
<td>Thirty (30) workdays</td>
</tr>
<tr>
<td>60-119 months</td>
<td>Thirty-seven (37) workdays</td>
</tr>
<tr>
<td>120-179 months</td>
<td>Forty-five (45) workdays</td>
</tr>
<tr>
<td>180-239 months</td>
<td>Fifty-two (52) workdays</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>Sixty (60) workdays</td>
</tr>
</tbody>
</table>

(ii)(i) Leave in excess of the maximum amounts specified in paragraph (h) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(iii)(i) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.
Section 2. Sick Leave (1) Accrual of sick leave.
(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.
(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.
(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.
(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.
(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.
(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.
(g) The total service shall be verified before the leave is credited to the employee's record.
(h) A former employee who has been retired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.
(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.
(j) Sick leave may be accumulated with no maximum.
(k) Use and retention of sick leave with pay.
(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:
1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others; or
5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days.
(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.
(c) An employee eligible for state contributions for life insurance (and health benefits) under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.
(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been paid leave, other than educational leave, during any part of the previous pay period.
(e) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.
(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.
(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.
(h) Sick leave without pay.
(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:
1. The total continuous leave does not exceed one (1) year; and
2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.
(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.
(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.
(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to the employer's failure to have exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.
(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.
(f) If reasonable accommodation is requested, the employee shall:
1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.
(g) An employee shall be considered to have resigned if he:
1. Has been on one (1) year continuous sick leave without pay;
2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;
3. Is unable to return to his former position;
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and
5. Has not been placed by the appointing authority in a vacant position.
(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.
(i) An employee who has been resigned under paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.
(j) Workers' compensation.
(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.
(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.
(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.
(d) Application for sick leave and supporting documentation.
(e) For emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.
(f) The employee shall notify the immediate supervisor or other designated person. Failure,
without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, upon the employee's leave, that balance shall be prorated:

(a) The employee to reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) The employee to use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof, or

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay; if the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty
Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the time the polls are open, up to a maximum of four (4) hours.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school or training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 10. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tomato, flood, blizzard or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor require the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 12. Incorporation by Reference. (1) Overtime Compensation Form, September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Suite 1000, 900 Frankfort Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 15, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2009 at 1 p.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five workingdays prior to the hearing or, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Joe R. Cowles, Office of Legal Services, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joe R. Cowles

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation details the various types of classified leave available to state employees. This includes eligibility for the employer health insurance and life insurance contributions.
(b) The necessity of this administrative regulation: This regulation is necessary to administrate and regulate the various types of classified leave available to state employees in a consistent and effective manner.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Personnel Cabinet in complying with KRS 18A.110, administering the various types of classified leave available to state employees.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: As a result of HB 406, 2008 GA, the Kentucky Employees Health Plan moved from a pre-bill and pay model to a current bill and pay model. In short, now employee and employer health insurance contributions are billed and paid in the same month that the employee receives the benefits of health insurance coverage. As currently written, this regulation provides the employer contribution for an employee that "worked or been on paid leave, other than educational leave, during any part of the previous month." This language was consistent with the pre-bill and pay model but not administration under the current bill and pay model. This change in the definition of health insurance contributions has affected health plan eligibility. Under the current bill and pay model health insurance eligibility and the Commonwealth/employer contribution ends at the last pay period the employee is employed with the Commonwealth. For example, if an employee terminates, resigns or retires on July 12, 2009 his or her insurance would terminate on July 15, 2009, the last day of the pay period. The existing regulation language is not consistent with the collection of health insurance contributions and administration of the Kentucky Employees Health Plan.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to the Kentucky Employees Health Plan administration as a result of the change from a pre-bill and pay model to a current bill and pay model effective in January 1, 2009.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment will allow for consistent and effective administration of the classified leave regulation and administration of the Kentucky Employees Health Plan.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for consistent and effective administration of the classified leave regulation and administration of the Kentucky Employees Health Plan.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and other individuals subject to the provisions of 101 KAR 2:102 will be affected. (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Personnel Cabinet, Department of Human Resources Administration and Department of Employee Insurance will implement this regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to this amendment is consistent administration of the Kentucky Employee Health Plan and classified leave provisions as a result of the move from a pre-bill and pay to a current bill and pay model was effective in January 1, 2009 pursuant to HB 406.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no costs associated with implementing this amendment to the administrative regulation.
(b) On a continuing basis: There are no costs on a continuing basis of implementing this administrative regulation amendment.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding required for implementation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation amendment will not require an increase in funding or fees.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No, all merit, classified employees will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All entities that are subject to KRS Chapter 18A and its associated regulations will be impacted by this amendment.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110, 18A.030, 18A.110, 18A.195, 61.394, 344 033, 29 U.S.C. 201, et seq., 2601, et seq.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 administrative regulation amendment 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? The administrative regulation amendment will not generate any revenue.
(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation amendment initially are believed to be zero.
(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation amendment on a continuing basis are believed to be zero.

PERSONNEL CABINET
Office of the Secretary
(Amendment)

101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A 202, 199.555(1)
STATUTORY AUTHORITY: KRS 18A 030(2), 18A.110(1)(d), 18A.202(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(d) requires the Secretary of Personnel to promulgate administrative regulations to implement work-related incentive
Section 1. Employee Suggestion System. (1) Administration. An employee with status in the classified service and employees governed by KRS Chapter 16 or Chapter 16, as amended, may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

(a)1. The employee suggestion system council, headed by the chairperson designated by the Secretary of Personnel, shall:

a. Ensure proper evaluation of each suggestion;

b. Review and act upon, by approval or denial, a suggestion presented to the council by a cabinet or agency; and

c. Reconsider denials as set forth in subsection (4) of this section.

2. A designated coordinator may present recommended suggestions to the council and request that the council vote on suggestions.

3. The council may defer action for up to one (1) year and one (1) month pending documentation of cash savings.

4. The council shall receive administrative support from the Personnel Cabinet.

5. The council shall prepare an annual report to be submitted to the Secretary of Personnel that shall include the number of suggestions received and the status of each suggestion.

6. The council shall meet:

a. At a minimum on a quarterly basis; or

b. Upon the request of the council.

2. Chairperson or a majority of the coordinators.

(c) The coordinator shall present suggestions recommended for approval by the cabinet or agency to the council for consideration.

(2) Eligibility.

(a) A suggestion shall be a positive idea which:

1. Explains how to improve methods, equipment or procedures;

2. Reduces time or cost of a work operation;

3. Creates a safer work environment;

4. Increases revenue; or

5. Improves relationships with or services for the public.

(b) The suggestion shall:

1. Present an improvement in state service or function;

2. Explain how the change would be accomplished;

3. Define what benefits would be realized by the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations;

4. a. Be made by an employee to the employee's cabinet or agency; or

b. Be forwarded from other coordinators if the suggestion affects the coordinator's agency;

5. Within ninety (90) working days of implementation by the agency, be:

a. Submitted on the Employee Suggestion Form P-35; and

b. Accompanied by exhibits or illustrations as needed;

6. Be practical, useful, and constructive; and

7. Be eligible for an award only after legislative action or administrative regulation changes, if required, have been completed which shall be the responsibility of the agency that desires to implement the suggestion to request.

(c) The following suggestions shall not be eligible for a cash award:

1. A suggestion that falls within the scope of the duties of the suggested and which the suggested has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include a specific set of tasks as set forth in the position description of the suggested upon submission of the suggestion;

2. A suggestion related to a particular problem given to an employee to solve within the scope of the employee's duties and responsibilities;

3. A suggestion made by a member of the council, a cabinet, or agency suggestion review committee;

4. A suggestion which includes a proposal to perform routine maintenance operations or follow manufacturer's recommendations;

5. A suggestion to make a change which has been documented in writing as already under consideration by those administratively responsible;

6. A suggestion which corrects an error or condition that exists because established procedures were not followed.

(d) If more than one (1) suggestion makes significant contributions to the idea, the suggestion may be submitted jointly, and an award granted shall be divided equally between or among the suggesters.

(e) If the first suggestion received shall take precedence over all future suggestions having the same purpose.

2. If two (2) or more similar suggestions are received on the same day, an award granted shall be divided equally between or among the suggesters.

(f) A suggestion shall be considered a confidential communication among the suggesters and the employees and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) General provisions.

(a) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

1. A method to notify the suggester in writing that the suggestion has been received and to notify the suggester in writing of a change in the status of the suggestion;

2. A method to document the original suggestion, evaluation, and action taken; and

3. A method to prepare and present documentation of a suggestion for recommendation to the council.

(b) Eligibility of a suggestion shall be evaluated according to the circumstances existing upon submission of the suggestion.

2. An evaluation shall be completed by a person with expertise in the area under consideration.

3. The results of the evaluation shall be recorded on the Evaluation of Employee Suggestion, P-35, and the form shall be dated and signed by the individual making the evaluation.

(c) The suggester shall be notified in writing of the disposition of the suggestion within ninety-five (95) calendar days of receipt by the coordinator.

2. If all parties involved agree, an extension of time shall be granted if extenuating circumstances exist.

3. A suggestion shall be considered to be active and eligible for an award until the suggester is notified in writing that the suggestion has been approved or denied.

4. If a suggestion will not be implemented, the coordinator shall notify the suggester in writing stating the reason it was not implemented.

5. A. If an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency.

b. The request shall:

(i) Be in writing;

(ii) Be evaluated by the next level of supervision;

(iii) Be received by the agency within one (1) year from the date of rejection; and

(iv) Include information regarding the change in conditions.

(d) If a suggestion is approved and implemented by the cabinet or agency, the suggester's coordinator shall recommend approval of the suggestion to the council.

1. The recommendation shall contain:

a. The suggestion as completed by the suggester on the Employee Suggestion Form, P-35;

b. The evaluation forms completed according to the criteria set forth in this administrative regulation; and

c. A statement of actual or projected cost savings using generally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson of the council shall send written notification of the council's action to the suggester's coordinator and the coordinator shall then provide written notification to the suggester regarding the decision.

3. If an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.
(e) Award of cash payment shall be in accordance with KRS 18A.202.

1. The cash payment shall be calculated based upon the amount saved over the period of one (1) year minus implementation costs and shall be determined according to generally accepted accounting principles.

2. a. The award check shall be issued by the agency where the suggester is employed.
   b. Funds for payment shall come from the agency or agencies implementing the suggestion.
   c. If applicable the agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total award amount.
   d. If a suggestion may result in financial savings to the state and proper documentation of cost savings has not yet been obtained, the council shall request that each agency implementing the suggestion maintain records which document the cost savings for a period not to exceed one (1) year from the date of implementation.
   e. Documentation shall be conducted according to generally accepted accounting principles.

3. This cost savings analysis shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of completion of the analysis.

(f)1. If a suggestion has been approved by the council and has resulted in financial savings to the state, the suggester shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of $100 and a maximum of $2,500.

2. If a suggestion approved by the council results in an Intangible Improvement in state service, the suggester shall be compensated in the amount of $100.

3. Upon the suggester's receipt of compensation, the suggestion shall become the property of the state.

4. Reconsideration.
   a. A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial is received by the suggester.
   b. 1. The suggester shall request reconsideration in writing and shall set forth the basis for the request.
   2. a. The request shall be filed with the coordinator within ten (10) days of the date of the denial.
   b. If the tenth day falls on a day that the cabinet or agency office is closed during regular work hours, the request may be filed on the next work day.
   c. Within thirty (30) work days, the cabinet or agency shall act on the request for reconsideration and notify the suggester in writing of the reasons for the decision.

5. Council review.
   a. 1. A suggester may be reviewed by the council on its own motion, or upon request of the suggester.
   2. If a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council.

   a. The suggester shall request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth in writing the basis for the request.
   b. 1. The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.
      2. If the 30th day falls on a day that the chairperson's office is closed during regular work hours, the request may be filed on the next work day.
   b. The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review.
   c. The council chairperson shall notify the agency head of the council's findings and its recommendation concerning the suggestor's implementation or denial.

Section 2. Adoption Benefit Program. 1. A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child.

(a) The eligible employee shall receive:
   1. Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or
   2. Up to $3,000 in unreimbursed direct costs related to the adoption of any other child.
   b. Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:
      1. Licensed adoption agency fees;
      2. Legal fees;
      3. Medical costs;
      4. Court costs; and
      5. Other fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.

(c) Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with documentary evidence of:

1. Finalization of the adoption;
2. Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and
3. A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the finalization of the adoption.

(d) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in paragraph (a) of this subsection.

(e) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel.

Section 3. Incorporation by Reference. 1. The following material is incorporated by reference:
   (a) "Employee Suggestion Form", P-35, October 1997;
   (b) "Evaluation of Employee Suggestion" Form, P-36, October 2007; and
   (c) "State Employee Adoption Assistance Application", October 2001.

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, 300 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 14, 2009
FILED WITH LRC: July 14, 2009 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on August 21, 2009 at 3 p.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five workdays prior to the hearing, or their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Daniel F. Egbers, Office of Legal Services, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Daniel F. Egbers
1. Provide a brief summary of:
   (a) What this administrative regulation does: This administra-
tive regulation establishes the requirements for an employee suggestion system.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the statutory mandate in KRS 18A.110, which requires the Personnel Cabinet to promulgate administrative regulations to implement work-related incentive programs for state employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the statute authorizing the Secretary of the Personnel Cabinet to establish work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Personnel Cabinet in complying with KRS 18A.110.

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

(a) How the amendment will change this existing administrative regulation: The amendment mirrors KRS 18A.202 by including employees failing under KRS Chapter 16 for incentive programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include KRS Chapter 16 employees as referenced in KRS 18A.202.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the implementation of work-related incentive programs, such as the employee suggestion system for KRS Chapter 16 employees in addition to classified service employees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows KRS Chapter 16 employees to participate in the incentive programs as referenced in KRS 18A.202.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employees with status in the classified service of the executive branch, and employees failing under KRS Chapter 16 may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question 3: Complying with this administrative regulation will not have a cost impact to participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3: The amendment allows KRS Chapter 16 employees to participate in the incentive programs as referenced in KRS 18A.202.

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

(a) Initially: There are no costs associated with implementing this amendment to the administrative regulation.

(b) On a continuing basis: There are no costs on a continuing basis of implementing this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As there is no implementation of the amendment, no funding is required.

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

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

(9) TIERING: Is tiering applied? No, all merit, classified employees will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be affected by this administrative regulation? This administrative regulation amendment will affect all employees with status in the classified service of the executive branch, and employees failing under KRS Chapter 16 which may be recognized and rewarded for submitting a suggestion that results in the improvement of state service or in the realization of financial savings by the state.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 18A.110(1)(d).

4. Describe the effect of this 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 administrative regulation amendment 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? The administrative regulation amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation amendment initially are believed to be zero.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation amendment on a continuing basis are believed to be zero.

PERSONNEL CABINET

(AMENDMENT)

101 KAR 3:015. Leave administrative regulations for the unclassified service.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave:

(a) Each full-time employee shall accumulate annual leave at the following rates:

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to earn annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of
er notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee’s accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:
1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 12 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 12 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee’s record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:
1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor’s statement certifying the employee’s inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor’s statement certifying the employee’s need to care for a family member;
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others; or
5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance [and health benefits] under the provisions of KRS Chapter

- 424 -
18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:
   1. The total continuous leave does not exceed one (1) year; and
   2. The employee has used or been paid for all accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, extending holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:
   1. Inform the employer; and
   2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:
   1. Has been on one (1) year continuous sick leave without pay;
   2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;
   3. Is unable to return to his former position;
   4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; and
   5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted under this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under paragraph (g) of this subsection shall retain remuneration privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an employee who is transferred to another jurisdiction, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require continuation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601, et seq., and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:
   (a) Completed twelve (12) months of service; and
   (b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:
   (a) The employee's leave balance has been exhausted; or
   (b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:
   (a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof; or
   (b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave paid and overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions
of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is in a policy-making position shall be paid for fifty (50) hours at his regular rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave equal to the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for Investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Absences Due to Adverse Weather. (1) An employee, who is designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions, such as tornado, flood, blizzard or ice storm, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

- 426 -
(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is who are on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence if it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation;

(b) Qualify for the remainder of the blood donation leave.


(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 501 High Street, 3rd Floor[600 Fair-Oak Lane, 6th-Floor], Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 16, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2009 at 2 p.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within 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 August 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: Joe R. Cowles, Office of Legal Services, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Joe R. Cowles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of unclassified leave available to state employees. This includes eligibility for the employee health insurance and life insurance contributions.

(b) The necessity of this administrative regulation: This regulation is necessary to administrate and regulate the various types of unclassified leave available to state employees in a consistent and effective manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Personnel Cabinet in complying with KRS 18A.110, administering the various types of unclassified leave available to state employees.

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

(a) How the amendment will change this existing administrative regulation: As a result of HB 406, 2008 GA, the Kentucky Employees Health Plan moved from a pre-bill and pay model to a current bill and pay model. In short, now employee and employer health insurance contributions are billed and paid in the same month that the employee receives the benefits of health insurance coverage. As currently written, this regulation provides the employer contribution for an employee that "worked or been on paid leave, other than educational leave, during any part of the previous month." This language was consistent with the pre-bill and pay model but not administration under the current bill and pay model. This change in receipt of health insurance contributions has affected plan eligibility. Under the current bill and pay model, health insurance eligibility and the Commonwealth/employer contribution ends at the last pay period the employee is employed with the Commonwealth. For example, if an employee terminates, resigns, retires on July 15, 2009 and his or her insured plan terminates on July 15, 2009, the last day of the pay period. The existing regulation language is not consistent with the collection of health insurance contributions and administration of the Kentucky Employees Health Plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to the Kentucky Employees Health Plan administration as a result of the change from pre-bill and pay to a current bill and pay model was effective in January 1, 2009.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will allow for consistent and effective administration of the unclassified leave regulation in order to administer of the Kentucky Employees Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for consistent and effective administration of the unclassified leave regulation and administration of the Kentucky Employees Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A unclassified employees and other individuals subject to the provisions 101 KAR 3.015 will be affected.

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

(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative regulation or amendment. The Personnel Cabinet, Department of Human Resources Administration and Department of Employee Insurance will implement this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to this amendment is consistent administration of the Kentucky Employee Health Plan and uncapped leave provisions as a result of the move from a pre-bill and pay to a current bill and pay model was effective in January 1, 2009 pursuant to HB 240. (Provide an estimate of how much it will cost the administrative body to implement this regulatory amendment:

(a) Initially: There are no costs associated with implementing this administrative regulation to the administrative body.

(b) On a continuing basis: There are no costs on a continuing basis of implementing this administrative regulation amendment.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding required for implementation.

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

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

(f) TIERING: Is tiering applied? No, non-ment, uncapped employees will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All entities that are subject to KRS Chapter 18A and its associated regulations will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the actions taken by the administrative regulation: KRS 15A.110, 18A.030, 18A.110, 16A.193, 61.394, 344.030, 29 U.S.C. 201, et seq., 2601, et seq.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 administrative regulation amendment 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? The administrative regulation amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation amendment initially are believed to be zero.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation amendment on a continuing basis are believed to be zero.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:121. Improper conduct.

RELATES TO: KRS 324 010(3), 324.160(4)(f), (l), (m), (o), (w), (v), (5), (7), 24 C.F.R. 3500

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct.

Section 1. The following shall be improper for any licensed agent:

1. To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.

2. It shall not be improper conduct to advertise the fee or other compensation the licensed agent agrees to charge for his services.

3. To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. This provision shall not be construed to permit otherwise unlawful discrimination.

4. To fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

(a) Loyalty;

(b) Obedience to lawful instructions;

(c) Disclosure;

(d) Confidentiality;

(e) Reasonable care and diligence;

(f) Accounting.

5. To advertise guaranteed sales plan without required disclosures:

(a) Whether a fee is charged for participation;

(b) Whether the real estate shall meet qualifications for participation;

(c) Whether the purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and

(d) Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee.

1. In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letter in the advertisement, and

2. In radio advertising, that the disclosure shall be verbal and clearly understandable, and

3. In television advertising, that the disclosure shall:

(a) Be verbal and clearly understandable;

(b) Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering and in letters;

(c) Which are fourteen (14) video scan lines in size for letters which are all upper case;

(d) Which are twenty-four (24) video scan lines in size for upper case capitals when upper case capitals and lower case letters are used.

5. To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.

22(9) To serve in the dual capacity of a real estate licensee and a loan originator, if the real estate licensee, while acting in that capacity:

(a) Fails to disclose this dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities;

(b) Fails to contact the Department of Financial Institutions to register and pay the one (1) time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing; or

(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below.
1. Taking information from the borrower and filling out the application;
2. Analyzing the prospective borrower’s income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;
4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
5. Initiating or ordering a verification of employment and verifications of deposit;
6. Initiating or ordering a request for mortgage and other loan verifications;
7. Initiating or ordering appraisals;
8. Initiating or ordering an inspection or engineering report;
9. Providing disclosures (truth in lending, good faith estimate, others) to the borrower;
10. Assisting the borrower in understanding and cleaning credit problems;
11. Maintaining regular contact with the borrower, realtors, lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;
12. Ordering legal documents;
13. Determining whether the property was located in a flood zone or ordering such service; and
14. Participating in the loan closing;
(c) Requests or receives compensation that is not commensurate with the actual work performed; or
(e) Requests or receives compensation for work that is not actually performed by him or her.
               (2)(6) A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license.

KEN PERRY, Chairperson
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 1:30 p.m., local time, in the conference room of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines improper conduct.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline specific types of prohibited conduct.
(c) How this administrative regulation conforms to the content of the enacting statutes: KRS 324.282(5) allows the commission to promulgate regulations to further explain disciplinary statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines specific prohibited conduct, as barred by certain statutes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will eliminate duplication.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to eliminate duplication.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment will simply eliminate unnecessary duplication.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate possible confusion for the licensees by avoiding duplication.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees are affected by this administrative regulation.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will eliminate unnecessary duplication.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: None.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: N/A.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

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 Real Estate Commission is the only entity affected by this regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5) and 324.292.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.
(c) How much will it cost to administer this program for the first year? No costs will be associated with this change.
(d) How much will it cost to administer this program for subsequent years? No costs will be associated with this change.
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 Real Estate Commission
(Alignment)

201 KAR 11:190. Disciplinary proceedings [Rules of practice and procedure before the Kentucky Real Estate Commission].

RELATES TO: KRS 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

EXEMPLARY AUTHORITY: KRS 324.151(1), (3), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) requires the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) require the commission to adopt the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or before ordering any disciplinary action against a licensee [suspending or revoking a license]. This administrative regulation establishes supplemental procedures for filing a complaint and for the action to be taken by the commission on a complaint [administrative hearing procedures for matters before the commission] and the required forms for a complaint or answer.

Section 1. Definitions. (1) "Agreed Order" means a written document that includes, but is not limited to, stipulations of fact or stipulated conclusions of law that finally resolve an initiating complaint or a complaint issued informally without expectation of further formal proceedings;
(2) "Charge" means a specific allegation that a person has violated a specified provision of KRS Chapter 324;
(3) "Final order" means an order issued by the commission that represents the commission's final action in a case;
(4) "Formal complaint" means a formal administrative pleading authorized by the commission that sets forth one (1) or more charges against a broker or sales associate and commences a formal disciplinary proceeding under KRS Chapter 13B; (5) "Initiating complaint" means any allegation in whatever form alleging that a broker or sales associate has violated one (1) or more requirements of KRS Chapter 324 or the administrative regulations of the commission;
(6) "Letter of concern" means an advisory letter to notify a broker or sales associate that, although there is insufficient evidence to support disciplinary action, the commission believes the licensees should modify or eliminate certain practices and that the continuation of those practices may result in action against the license held by the broker or sales associate;
(7) "Order" means a direction of the commission made or entered in writing that determines some point or directs some step in the proceeding and is not included in the final order;

Section 2. Initiating Complaint Process. (1) All initiating complaints against licensees shall be submitted to the commission and may be submitted by any person, including a commission member;
(2) The initiating complaint shall:
(a) Alleg a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;
(b) State the basis of the complaint fully and concisely, including the name of the licensee or his or her principal broker;
(c) Be verified by a notary public;
(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and
(e) Be filed within two (2) years from:
1. Actual knowledge of the cause of action; or
2. The time circumstances would reasonably put the complainant on notice of the cause of action.
(3) The initiating complaint shall be reviewed by the commission's general counsel or a staff attorney. If the review results in a determination that the complaint does not allege a prima facie case of a specific violation of KRS 324.160, then the complaint shall file a sworn supplement to the complaint in accordance with KRS 324.151;
(4) Each initiating complaint shall be investigated as necessary. Upon completion of its inquiry, the commission shall make a finding that:
(a) There is no evidence of a violation of any provision of KRS Chapter 324 and no further action is necessary;
(b) There is insufficient evidence of a violation to warrant the issuance of a formal complaint, but there is evidence of a practice or activity that requires modification and the commission may issue a letter of concern. The letter of concern shall be a public document and may be used in future disciplinary actions against the licensees;
(c) The initiating complaint discloses an instance of misconduct which does not warrant the issuance of a formal complaint. In these instances, the commission may admonish or reprimand the broker or sales associate for his or her misconduct or;
(d) The initiating complaint discloses one (1) or more violations of the provisions of KRS Chapter 324 that warrant the issuance of a complaint. The commission shall prepare a formal complaint signed by its executive director, which shall contain sufficient information to apprise the named broker or sales associate of the general nature of the charges.

Section 3. Formal Complaint Process. (1) The commission's issuance of a formal complaint shall initiate its formal disciplinary process;
(2) Upon the issuance of the formal complaint, the matter shall be assigned for an administrative hearing, which shall be scheduled pursuant to KRS Chapter 13B and 324. The commission or the hearing officer on behalf of the commission shall preside over all proceedings pursuant to the issuance of a formal complaint;
(3) The commission shall serve a formal complaint on the charged broker or sales associate by personal delivery or by certified mail to the licensee's last known address of record. The licensee shall submit a response within twenty (20) days after service. The commission may deem failure to submit a timely response or willful avoidance of service to be an admission of the charges;
(4) A respondent shall file a sworn answer to a formal complaint if a formal complaint is filed against him or her in accordance with the requirements of KRS 324.151. The answer shall:
(a) Identify the respondent;
(b) State his or her responses to the formal complaint;
(c) Be verified by a notary public; and
(d) Include a copy of the following documents:
1. Listing contract;
2. Purchase contract;
3. Seller's disclosure form;
4. Agency disclosure form; and
5. Settlement statement.
VOLUME 36, NUMBER 2 - AUGUST 1, 2009

(5) Upon completion of an administrative hearing, the commis-

sion shall issue a final order that:

(a) Dismisses the formal complaint upon a conclusion that the

provisions of KRS Chapter 324 have not been violated;

(b) Finds a violation of the provisions of KRS Chapter 324, but

does not impose discipline because the commission does not be-

lieve discipline to be necessary under the circumstances;

(c) Imposes discipline upon the licensee pursuant to KRS

324.160. The commission's order shall be considered the final

order of the commission regarding the matter.

(6) After the commission has issued a final order under this

section, it shall not reconsider the matter unless so ordered by a

court of competent jurisdiction (Complaint-Review and Investiga-

tion). (1) An aggrieved party shall file a Sworn Statement of Com-

plaint against a licensed real estate sales associate or broker. The

complaint shall:

(a) Specify a prima facie case of specific violation of KRS

324.160 in accordance with KRS 324.161;

(b) State the basis of the complaint fully and concisely, includ-

ing the name of the broker or principal broker;

(c) Be notarized by a notary public;

(d) Include a completed damages claimed form, with a copy of

each receipt, estimate, or other evidence of damages attached to

the report, and

(e) Be filed within two (2) years from:

1. Actual knowledge of the cause of action; or

2. The time circumstances would reasonably have put the

aggrieved party on notice of the cause of action.

(2) If the commission staff review determines the Sworn

Statement of Complaint does not allege a prima facie case of a

specific violation of KRS 324.160, the aggrieved party shall file a

Sworn Supplement to Complaint in accordance with KRS 324.161.

(3) A respondent shall file a Sworn Answer to Complaint if a

complainant is file against him in accordance with the require-

ments of KRS 324.161(9). The answer shall:

(a) Identify the respondent;

(b) State his responses to the complaint;

(c) Be notarized by a notary public; and

(d) Include a copy of the following documents:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency disclosure form; and

5. Settlement statement.

(4) Upon completion of an investigation following the submis-

sion of a complaint and answer, the commission shall:

(a) Dismiss the case without an administrative hearing if the fac-

tual evidence does not indicate a prima facie case for a violation

of KRS Chapter 324; or

(b) Schedule an administrative hearing pursuant to KRS Chap-

ter 138, 324.161, and 324.170, and

(c) Notify the complainant and respondent of its decision in

writing. (The notification shall include a brief statement explain-

ing the commission’s reasons for the decision.)

Section 4(12) Motions. (1) A request for the commission or a

hearing officer to take or refrain from taking an action shall be

made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a
citation of the provision of the legal authority in support of the

requested action, if applicable.

(3) A party shall be given an opportunity to respond to a mo-

tion.

Section 5(13) Withdrawal of a Complaint. A complainant may

withdraw a complaint if:

(a) An answer has not been filed in accordance with KRS

324.161; and

(b) The withdrawal is made within twenty (20) days of the date

the complaint was filed; or

(c) There is good cause for the withdrawal; and

(d) The commission approves the withdrawal.

Section 6(14) Consolidation and Severance. (1) A hearing

officer may consolidate cases assigned to his docket upon a finding

by the hearing officer that:

(a) There are:

1. Common questions of law or fact; or

2. Identical issues or witnesses; and

(b) Consolidation is appropriate.

(2) A hearing officer may sever consolidated cases or claims in

an administrative action upon a finding that the requirements for

consolidation established in subsection (1) of this section are not

met.

Section 7. Settlement by Informal Proceedings. (1) At any time

after the authorized issuance of a formal complaint, the responding

broker or sales associate may seek an informal dispensation of

any matter upon signing a waiver that states that the broker or

sales associate waives his or her right to raise any constitutional,

statutory or common law objection should the commission reject

the informal proposal or if informal proceedings are curtailed by

the commission’s prosecuting staff attorney. The commission’s pro-

secuting staff attorney shall have complete discretion to negotiate

with the responding broker or sales associate concerning stipula-

tions of fact, conclusions of law and proposed discipline. The pro-

secuting staff attorney shall also have discretion to reject any or all

offers of informal dispensation and may commence informal pro-

ceedings on his or her own initiative.

(2) Whenever the commission determines that an informal pro-

ceeding is not desirable, it shall provide notice of its determination

in a written notice to the parties.

(3) If the commission accepts an offer of informal dispensation,

the matter shall continue to proceed as a formal proceeding how-

ever, further informal negotiations may be conducted and subse-

quent offers of informal dispensation presented to the commission.

However, shall not be taken as a finding or determination of any

kind on behalf of the commission and no orders or other pleadings

shall be filed or record in regard to any rejected proposal.

(4) The commission may enter oral or written presentation

before the commission in regard to any offer of informal dispensa-

tion. Oral presentations shall be read and written presenta-

tions shall not be filed in the record of included in the commission’s

minutes. All oral and written presentations shall be heard and con-

sidered in closed session.

(5) An agreed order or settlement reached through this process

shall be approved by the commission and signed by the parties in

the proceedings and by the chairperson of the commission.

(6) The commission may employ mediation as a method of

resolving the matter informally.

Section 8. Opinion of the Commission. (1) In order to assist a

licensee in determining what actions would constitute unacceptable

conduct under the provisions of KRS Chapter 324, the licensee

may request an opinion of the commission by written request sub-

mitted to the commission’s general counsel or staff attorneys. The

commission may respond in writing if the request addresses an

issue of such public or real estate interest that the commission’s

opinion on the subject is deemed desirable.

(2) In formulating a response to a request, the commission

may request an opinion from any concerned real estate profes-

sional association or society. The commission shall not be bound

by this supplemental opinion.

(3) The commission shall keep a permanent record of each

request and any commission response. The commission may pub-

lish its written opinions issued under this section.

Section 9(66) Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Sworn Statement of Complaint" 3/01 edition, Kentucky
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

Real Estate Commission;
(b) "Sworn Answer to Complaint", 7/98 edition, Kentucky Real
Estate Commission; and
(c) "Sworn Supplement to Complaint", 10/00 edition, Kentucky
Real Estate Commission.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Real Estate
Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky
40223, Monday through Friday, 8 a.m. to 4:30 p.m.

KEN PERRY, Chairperson
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
August 25, 2009 at 1:30 p.m., local time, in conference room of the
Kentucky Real Estate Commission located at 10200 Linn Station
Road, Suite 201, in Louisville, Kentucky. Individuals interested in
being heard at this hearing shall notify this agency in writing by five
workdays prior to the hearing, of their intent to attend. If no notifica-
tion of intent to attend the hearing is received by that date, the
hearing may be canceled. This hearing is open to the public. Any
person who wishes to be heard will be given an opportunity to
comment on the proposed administrative regulation. A transcript
of the public hearing will not be made unless a written request for a
transcript is made. If you do not wish to be heard at the public
hearing, you must submit written comments on the proposed ad-
mnistrative regulation. Written comments shall be accepted until
August 31, 2009. Send written notification of intent to be heard at
the public hearing or written comments on the proposed notification
of intent to be heard at the public hearing or written comments on
the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kewe.
Kentucky Real Estate Commission, 10200 Linn Station Road, Suite
201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502)
429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
establishes the requirements for the formal and informal disposition
of matters pending before the commission.
(b) The necessity of this administrative regulation: This regula-
tion sets the guidelines for handling grievances/initiating complaints.
(c) How this administrative regulation conforms to the content
of the authorizing statutes. This regulation clarifies the griev-
ance/initiating complaint process set out in the authorizing statute,
generally, and in KRS 324.151, specifically. Moreover, KRS
324.282(5) allows the Commission to promulgate regulations for its
disciplinary cases.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regulation
will ensure that complaints are processed in a more efficient and
fair manner.

(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment will change the existing administrative
regulation by explaining the grievance/initiating complaint process
and the formal complaint processes in separate and distinct sec-
tions to avoid confusion
(b) The necessity of the amendment to this administrative
regulation: This amendment is necessary to streamline and clarify
the current process for handling grievances/initiating complaints
and formal complaints.
(c) How the amendment conforms to the content of the autho-
rizing statutes: The authorizing statutes allow the commission to
administer a grievance/initiating complaint process, as allowed by
KRS 324.282(5).
(d) How the amendment will assist in the effective administra-
tion of the statutes: This amendment will make the griev-
anance/initiating complaint process much simpler.
(3) List the type and number of individuals, businesses, organiz-
atons, or state and local governments affected by this administra-
tive regulation: All licensees and consumers could be affected by
this regulation, if they become involved in a grievance/initiating complaint.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this administra-
tive regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative
regulation or amendment: There will be no action required by these
entities, except to comply with the new process.
(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 associated cost with this new griev-
ance/initiating complaint process.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The benefit of this amendment is
its streamlined process, which makes it more efficient and fairer.
(5) Provide an estimate of how much it will cost the administra-
tive body to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(c) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if new, or by the change if it is an amendment: No increase in
fees will be necessary.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: This
regulation does not establish or change any fees.
(9) TIERING: Is tiering applied? Tiering was not used because
this regulation should not disproportionately affect any particular
group of people.

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 Real
Estate Commission is the only entity affected by this regulation.
3. Identify each federal statute or federal regulation that
requires or authorizes the action taken by the administrative
regulation. KRS 324.151(1) and (3), 324.281(5), 324.282, and
138.070(3)
4. Estimate the effect of this administrative regulation on the
expenditures and revenues of a state or local government agency
(including cities, counties, fire departments, or school districts) for
the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for the first year? No revenue
will be generated
(b) How much revenue will this administrative regulation gener-
ate for the state or local government (including cities, counties,
fire departments, or school districts) for subsequent years? No
revenue will be generated.
(c) How much will it cost to administer this program for the first
year? No costs will be associated with this change.
(d) How much will it cost to administer this program for subse-
quent years? No costs will be associated with the change.
Note: If specific dollar estimates cannot be determined, provide
a brief narrative to explain the fiscal impact of the administrative
regulation.
Revenues (+/-): $0
Expenditures (+/-): $0
Other Explanation.
GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:250. Listing and purchase contracts and other agreements entered into by licensees; provisions required; seller-initiated relisting request disclosure form.

RELATES TO: KRS 324.160(4)(o), (v), (w), 324.281(5)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards for listing and purchase contracts and standards for other types of agreements between licensees and consumers involving real estate brokerage.

Section 1. A listing contract shall include the:
(1) Listing price of the property, unless the sale is to be by auction;
(2) Date and time of the signing of the listing contract for all parties who sign;
(3) Date and time of expiration of the listing contract;
(4) Fee or compensation agreed upon;
(5) Street, address or location of the real estate listed for sale;
(6) Signatures of all parties;
(7) Special directions of the owner concerning limitations on showings and subagency restrictions; and
(8) Date and time for intailing of all changes on the contract.

Section 2. An offer to purchase or a counteroffer prepared by or at the direction of a licensed agent shall include the:
(1) Purchase price, the amount of contract deposit given and who is to hold the deposit;
(2) Date and time of signing of the offer or counteroffer for all parties who sign;
(3) Date and time when the offer or counteroffer expires;
(4) Street, address or a general description of the real estate sufficient to identify the parcel;
(5) Names of the offering party and the agent who prepared the offer or counteroffer; and
(6) Provision setting forth the date by which the closing shall occur and when possession shall be given to the buyer.

Section 3. (1) If a licensee presents an offer to purchase real estate for which an escrow contract to sell the property is already in existence, the offer shall indicate in writing that the offer is contingent upon the nonperformance of the existing escrow contract by inserting the following provision in the offer: "This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer."
(2) The provision required in subsection (1) of this section shall be:
(a) Inserted by the licensee who prepares the offer to purchase, if he is aware of the existing contract; and
(b) Made by the listing licensee as a counteroffer.

Section 4. Contracts to Contain Financing Provisions. A contract providing for the purchase of property shall specifically set forth:
(1) The manner in which the purchase shall be financed; and
(2) The amount of any encumbrance and whether same is to be underwritten by the seller or a commercial institution or otherwise.

Section 5. Any agreement for compensation from a licensee to his or her client or customer shall be in writing. If a licensee fails to comply with the requirement in this section, the licensee's conduct shall be considered improper and in violation of KRS 324.160(4)(v).

Section 6. Negotiating a Listing Agreement Prior to the Expiration of the Original Listing Agreement. (1) A licensee shall not contact a seller in order to pursue the seller's current listing agreement.
(2) A licensee may enter into a new listing agreement with a seller who has a written outstanding listing agreement granting exclusive agency with another real estate broker only if:
(a) The new listing agreement will take effect upon the expiration of the current listing agreement and
(b) The commission's "Seller-Initiated Re-Listing Request Disclosure Form" is properly completed and signed by the seller and licensee. The form shall provide:
1. The seller's affirmation that the seller initiated contact with the licensee to discuss a new listing agreement;
2. The date on which the seller contacted the licensee to discuss a new listing agreement;
3. The signatures of the seller and the licensee, including the date and time that the seller and licensee signed the form.
(3) If a licensee fails to comply with the requirements in this section, the licensee's conduct and dealings will be considered improper and in violation of KRS 324.160(4).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

KEN PERRY, Chairperson
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 1:30 p.m., local time, in the conference room of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7245.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation outlines requirements for a new disclosure form.
(b) The necessity of this administrative regulation: This regulation is necessary to inform licensees of this new procedure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the commission to define licensee conduct.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulations will provide uniformity of disclosure for all licensees.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative
regulation: This amendment adds a new section to the current regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to further define the disclosure required under KRS 324.160(4)(c).
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes allow the commission to define licensee conduct.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide uniformity for all licensees.

2. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees could be affected.

3. 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 licensee will have to complete the required form.
(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 costs to comply with this administrative regulation.

4. As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be proper disclosure to eliminate liability and confusion.

5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) The total cost of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding, as this regulation will not cost the agency any money.

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 need for an increase in fees or funding to implement this regulation.

7. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish or change any fees.

8. Tiering: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 324.180(4)(c)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.
(c) How much will it cost to administer this program for the first year? No costs will be associated with this change.
(d) How much will it cost to administer this program for subsequent years? No costs will be associated with this change.

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 will neither cost nor generate monies for state or local governments.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:300. Use of facsimile and electronic mail transmissions; electronic storage.

RELATES TO: KRS 324.281(5), 324.282
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: To inform and set certain standards for the licensees and to protect the public.

Section 1. Facsimile Transmissions. (1) A licensee may use facsimile (FAX) devices to transmit and receive documents according to the provisions of this administrative regulation.
(2) A copy of a document transmitted by FAX device shall be immediately mailed by regular mail, postage prepaid and properly addressed, to the person to whom the FAX transmission is transmitted.
(3) A document received by FAX device shall be immediately reproduced on nonthermographic paper and placed in the licensee’s file as required under 201 KAR 11:002.

Section 2. If a licensee complies with Section 1 of this administrative regulation, the time of delivery of a document transmitted by FAX device, and a document required to be submitted under 201 KAR 11:045, shall be the time of transmission by FAX device.

Section 3. Electronic-mail Transmissions. (1) A licensee may use electronic mail to transmit and receive documents according to the provisions of this administrative regulation.
(2) A copy of a document received by electronic mail shall be immediately mailed by regular mail, postage prepaid, to any participating licensee who requests a copy of same.

Section 4. If a licensee complies uses electronic mail to transmit and receive documents, in accordance with section 3 of this administrative regulation, then the time of delivery of the electronically-mailed document shall be the time that it is sent from the originator’s electronic-mail system.

KEN PERRY, Chairperson
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 25, 2009 at 1:30 p.m., local time, in the conference room of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 324.282
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year; the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.
5. (c) How much will it cost to administer this program for the first year? No costs will be associated with this change.
   (d) How much will it cost to administer this program for subsequent years? No costs will be associated with this change.
   (e) 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 will neither cost nor generate monies for state or local governments.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:450. Broker management course.

RELATES TO: KRS 324.046(1)(a)
STATUTORY AUTHORITY: KRS 324.046(1)(a), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.046(1)(a) gives the commission the authority to promulgate an administrative regulation outlining a brokerage management skills course for all broker applicants. KRS 324.281(5) gives the commission the authority to promulgate administrative regulations. This administrative regulation outlines the requirements of the brokerage management skills course and incorporates the curriculum by reference.

Section 1. An applicant for a broker’s license shall first attend a three (3) academic credit hour brokerage management skills course as part of his or her twelve (12) hours of broker prelicense education real estate courses pursuant to KRS 324.046(1)(a).

Section 2. The brokerage management skills course shall:
(1) Satisfy three (3) hours of the applicant’s twelve (12) hours of real estate courses required to become a broker;
(2) Be a three (3) academic hour comprehensive review of all the skills necessary to run a brokerage office in accordance with:
   (a) KRS Chapter 324;
   (b) 201 KAR Chapter 11;
   (c) Common law and federal law relating to real estate; and
   (d) The standards of practice for a real estate broker pertaining to adequate supervision of all sales associates affiliated with the broker;
(3) Require each student successfully completing the course to develop a sample business plan, a sample financial plan and an office policy and procedure manual; and
(4) Require submission of these projects within one (1) year of

- 435 -
completion of the coursework.

(3)(a) Require each successful student to take a comprehensive, closed-book examination consisting of at least seventy-five (75) multiple choice questions and to pass the test with a minimum score of seventy-five (75) percent.

(b) One (1) retake of the examination shall be permitted.

(c) The examination shall be submitted to the commission for approval prior to use in the course.

(d) The commission shall review each proposed examination for content to ensure that each course topic is covered and tested.

(e) If certain areas are lacking, the commission shall issue recommendations as to how to improve the examination and shall allow the school thirty (30) days to resubmit the examination for approval.

(6)(b) Require schools and instructors to take appropriate steps to maintain the confidentiality of the final examinations at all times. These steps shall include:

(a) Maintaining examinations and answer keys in a secure place accessible only to the school administrator and the instructor.

(b) Prohibiting students from retaining copies of the final examination answer sheets.

(c) Monitoring the students at all times when examinations are being conducted.

Section 3. Instructors. (1) An instructor teaching this course shall have at least three (3) years of previous experience within the past five (5) years as a Kentucky approved instructor of prelicense courses.

(2) Each instructor shall attend a commission-approved training program specifically designed for this course prior to teaching the course for the first time.

(3) All approved prelicense schools shall be notified when a training program has been scheduled, and it shall be the school's responsibility to notify any instructors that wish to attend the training program.

(4) Upon completion of the training course, the instructor's request for approval shall be submitted to the commission for approval, along with the course materials.

(5) The commission shall notify the provider and instructor of its decision in writing.

(6) In order to retain approval to teach this course, an instructor shall attend all subsequent training programs that the commission deems necessary based upon changes in license laws and administrative regulations.

Section 4. Course Approval. (1) To obtain approval for the course, the school shall submit a course syllabus which outlines the requirements for the course and other attachments, specifically:

(a) The time period over which the course will be conducted and a sample schedule of how course will be offered;

(b) The course description and objectives;

(c) The attendance and participation requirements;

(d) When projects shall be due;

(e) When the final examination shall be conducted;

(f) The grading scale;

(g) The textbooks being used and how material will be taught in conjunction with completion of the projects, the final exam;

(h) The name and contact information for each instructor who will teach the course, subject to completion of the required instructor training program;

(i) A copy of the final examination bank and answer key; and

(j) A copy of the mandated curriculum.

(2) Course approval may be withdrawn by the commission if the instructor fails:

(a) To follow the prescribed outline;

(b) To require the students to develop a sample business and financial plan or a sample office policy and procedure manual;

(c) To require the students to take and pass a comprehensive examination and obtain a seventy-five (75) percent pass rate; or

(d) To attend training programs required by the commission.

(3) Any school whose course approval has been withdrawn may apply to the commission for an opportunity to be heard. The commission shall make a decision as to reinstatement of course approval.

Section 5. Monitoring. (1) A school shall permit monitoring by the commission or its authorized representative.

(2)(a) A school shall submit, sample copies of projects submitted by students and graded by the instructor as an evaluation of the course.

(b) If the instruction or content of the projects is deficient, so as to impair the value of the course, a notice of deficiency shall be issued to the school.

(c) The school shall be given an opportunity to correct the deficiency within thirty (30) days.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

KEN PERRY, Chairperson.

APPROVED BY AGENCY: July 13, 2009.

FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 1:30 p.m., local time, in the conference room of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets out the requirements for the broker management course.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standard course procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is authorized by KRS 324.046(1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the parameters of the course outlined in KRS 324.046(1)(a).

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

(a) How the amendment will change this existing administrative regulation: This amendment will set a deadline for project completion.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish a deadline for project completion.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute, which allows the commission to promulgate regulations to set course requirements.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow schools to set parameters for the required projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All broker applicants will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each broker applicant will have to complete his or her projects within one (1) year of coursework completion.

(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 associated with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will benefit by having standardized deadlines for project completion.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding, as this regulation will not cost the agency any money.

(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 need for an increase in fees or funding to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324.046(1)(a)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs will be associated with this change.

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

Revenues (+/-): $0
Expenditures (+/-): $0

Other Explanation: This change will neither cost nor generate any monies for state or local governments.

**GENERAL GOVERNMENT CABINET**

- Kentucky Board of Barbering
  (Amendment)

201 KAR 14:105. Barbering school enrollment and postgraduate requirements [Student—application—medical certificate].

RELATES TO: KRS 317.410, 317.440
STATUTORY AUTHORITY: KRS 317.430(1); 317.440(1), 317.440(1), 317.450(1)(a), 317.450(1)(b), 317.450(2)(c).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.450(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbenn, KRS 317.440(1) requires the Kentucky Board of Barben to promulgate administrative regulations governing applicants for barber licenses, KRS 317.450(1)(a)3 requires the Kentucky Board of Barbering to ensure that a license to practice barbering shall be issued only if an applicant has served as a licensed apprentice to a barber for at least nine (9) months, and KRS 317.450(2)(c) requires the Kentucky Board of Barbering to ensure that a licensed apprentice to a barber has graduated high school or possesses a General Educational Development (GED) certificate. The administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

Section 1. Enrollment Application. (1) Each student applicant shall complete and submit to the barbering school an Enrollment Application for Barber School.

(2) Each student applicant shall also submit:

(a) A copy of the applicant's high school:
   1. Certificate;
   2. Diploma; or
   3. Transcript or
(b) A copy of the applicant's General Educational Development (GED) certificate.

(3) The barbering school shall, within ten (10) calendar days of a student's enrollment, submit to the board:

   1. Student's enrollment application; and
   2. Documentation required by subsection (2) of this section.

(4) Upon receipt by the board, the board shall date stamp the material established in paragraph (a) of this subsection.

   2. The board's date stamp shall note the date of receipt of the documentation by the board and shall be used to determine compliance with the ten (10) calendar day deadline.

   (4) The barbering school shall not approve a student applicant's coursework for more than ten (10) days previous to the date the material required by subsection (3)(a) of this section is received by the board, as noted by the board's date stamp.

Section 2. Postgraduate Requirements. (1) A barbering school shall enroll a student that requests postgraduate coursework if the student has completed with:

(a) Section 1 of this administrative regulation;
   (b) 201 KAR Chapter 14; and
   (c) KRS Chapter 317.

(2) A barbering school shall not approve postgraduate coursework for less than 150 hours, except in accordance with 201 KAR 14 015 if the applicant has failed the licensing examination twice consecutively.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 2114 Leesport Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4 p.m. (School student application—medical certificate. This also establishes provisions for a brush-up course.)
Section 2—Each student applicant must furnish a health certificate on the form prescribed by the board, made out and signed by a physician licensed to practice medicine or osteopathy in Kentucky certifying that as a result of examination, the applicant has been found to be free of any infectious or communicable disease. An essential requirement of the medical certificate is a showing that a standard blood test for the detection of syphilis infection was made by a laboratory approved by the Commissioner, Department for Health Services, and that such tests have been performed as deemed necessary by the physician to certify that the individual is free of tuberculosis.

Section 3—The enrollment application, accompanied by the applicant's medical certificate, is to be mailed to the board within ten (10) days after the student's enrollment at the school of barbering.

Section 4—No student will be given credit for more than ten (10) days time in a school previous to the receipt of his or her medical certificate by the board.

Section 5—A school shall be permitted to enroll a student for a postgraduate brush-up course. The maximum time for such course to be 150 hours.

KAREN B. GREENWELL, Administrator
APPROVED BY AGENCY: May 13, 2009

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2009, at 10 a.m. Eastern Time at the office of the Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 19, 2009, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Karen Greenwell, Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell, Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the requirements for student application and medical certificates.
(b) The necessity of this administrative regulation: This administrative regulation relates to KRS 317.410 and 317.440 and is necessary to establish the responsibilities of the barber college in relation to submission of the student application for enrollment and the provision for a postgraduate course.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 317.430(1), 317.440(1) and 317.450(1)(a)(3)(2)(c) by establishing specific requirements to regulate the practice or teaching of barbering, the quantity and quality of supplies, materials, records and establishes requirements for barbering school enrollment and postgraduate coursework. This administrative regulation further conforms to the content of the authorizing statutes by incorporating by reference the enrollment application for barber schools.
(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 KRS 317.430(1), 317.440(1) and 317.450(1)(a)(3)(2)(c) by establishing provisions for a postgraduate course as well as providing specific requirements for documents required to accompany the enrollment application of each student in barber college.
(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 delete the requirement that each applicant must furnish a health certificate on the form prescribed by the board and will incorporate by reference the enrollment application for barber school.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to delete the requirement for a health certificate which is costly to the students and an unnecessary burden on the schools to oversee as there is no statute in KRS chapter 317 requiring such an examination.
(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to have complete supervision over the administration of the provisions of KRS Chapter 317 relating to barbers, barbering, barber shops, independent contract owners, barber schools the teaching of barbering and barber apprenticeship as well as the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools.
(d) How the amendment will assist in the effective administration of the statutes: By relieving the students and barber schools of the unnecessary cost and burden of the health certificate requirement as there is no statute in KRS Chapter 317 requiring such an examination.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect each of the eight licensed barber schools in the state of Kentucky and approximately 180 new students who enroll each 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 amendment will eliminate the cost to the student and relieve all schools of the time and burden of overseeing the examination of the student.
(b) In complying with this administrative regulation or amendment, how much will the cost of each of the entities identified in question (3): There are no new costs associated with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will eliminate the cost of the examination to each student and relieve the barber schools of the time and burden of overseeing the paper work involved.
(5) Ensure an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for the implementation and enforcement of this regulation.
(7) Provide an assessment of whether an increase in fees or funds will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No Increase in fees or funding will be required to implement the changes made by this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This
administrative regulation does not establish any fees or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals affected by the regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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? Barber schools licensed by the Kentucky Board of Barbering.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.410, 317.440(1) and 317.450(1)(a),(3),(2),(c).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated by this administrative regulation amendment for subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred by this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer this administrative regulation amendment 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. Please note that the amendment to this administrative regulation 210 KAR 14:105 will not create any new revenues for either the agency or state government. Further, this amendment will not create any new expenditures for the agency, the licensees or state government. This administrative regulation amendment simply deletes the requirement that each applicant to a barber school must furnish a health certificate on the form prescribed by the board and will incorporate by reference the enrollment application for barber school. There are no fee increases and no new fees established by the amendment to this administrative regulation.

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

301 KAR 2:551. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.399, 150.400, 150.415, 150.416(150.416), 150.590

STATUTORY AUTHORITY: KRS 150.025, 150.120(4), 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish [hunting] seasons for the taking of game and fish and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. KRS 150.120(4) authorizes the department to prohibit the possession of any illegal devices for the taking of wildlife. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. This administrative regulation is necessary to ensure the permanent and continued supply of fur, furbearers, and to protect other public interests by providing an adequate public interest by protecting them from excessive animal damage.

Section 1. Definitions.

(1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap that is not set to drown an animal upon capture.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws that close upon an animal's foot.

(4) "Furbearer" means ["Furbearer"—mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, Least weasel, Long-tailed weasel, marten, river otter, bobcat, coyote, and striped skunk.]

(5) "Hunter" means a person hunting furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the season established by 301 KAR 2.172.

(7) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device which is not power or spring assisted.

(8) "Squawker" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(9) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers.

(10) "Water set" means a trap set to drown an animal upon capture.

(11) "Youth" means a person who has not reached sixteen (16) years of age.

Section 2. Hunting and Trapping Seasons. Except as specified in 301 KAR 2.049 or 301 KAR 2.125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Raccoon and opossum:

(a) Hunting - November 1 through the last day of February. During the modern gun deer season, a raccoon or opossum hunter shall not:

1. Take raccoons or opossums during daylight hours; or
2. Carry a gun except a .22 caliber rimfire gun, except as provided by KRS 237.110.

(b) Trapping - noon the third day of the modern gun deer season through the last day of February.

(2) Coyote:

(a) Hunting: year round.

(b) Trapping: noon the third day of modern gun deer season through the last day of February.

(3) Bobcat:

(a) Hunting: noon the third Saturday in November through January 31.

(b) Trapping: noon the third day of the modern gun deer season through the last day of February.

(4) All other furbearers: noon the third day of the modern gun deer season through the last day of February.

(5) Furbearers taken by falconry: September 1 through March 30.

(6) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; and

(b) Chasing raccoons or opossums for sport and not to kill.

(7) [Free-young-week.] For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a hunting or trapping license. Statewide requirements and bag limits apply.

Section 3. Bag Limits. (1) There shall not be a bag limit on furbearers except bobcats, river otters, and those taken by falconry.

(2) A person shall not take more than five (5) bobcats per sea-
son, no more than [only] three (3) of which shall [be eaten] may be taken with a gun.

(3) A person shall not take more than six (6) river otters per season.

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

Section 4. Legal Hours of Take. A person shall not take fur-
bearers by hunting except during the times specified in this section.

(1) Furbearers. Daylight hours only, except raccoon and opos-
sum.

(2) Raccoon and opossum: Day or night, except that a person
shall not take raccoons or opossums during daylight hours during
the modern gun deer season.

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

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

Section 7. Raccoon and Opossum Restrictions. (1) A hunter
shall not use a light from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, a person
chasing raccoon or opossum from noon, March 1 through
October 31 shall not use or carry a:

(a) Firearm or concealed deadly weapon unless authorized by
KRS 237.110;
(b) Slingshot;
(c) Tree climber;
(d) Squeaker [squawker], or
(e) Similar device capable of killing, injuring or forcing a rac-
coon or opossum from a tree or den.

(3) A person participating in a department-approved raccoon
dog trial sanctioned by one (1) of the following organizations may use
a squeaker [squawker]:

(a) The American Coon Hunters Association;
(b) The American Kennel Club/American Coon Hunters Asso-
ciation;
(c) The National Kennel Club;
(d) The Professional Kennel Club;
(e) The United Coon Hunters Association; and
(f) The United Kennel Club.

Section 8. Trapping Methods. (1) A person trapping on dry land
shall not:

(a) Set traps closer than ten (10) feet apart; or
(b) Use a trap except a:

1. Deadfall,
2. Wire cage or box trap;
3. Foothold trap with a maximum inside jaw spread of six (6)
   inches measured perpendicular to the hinges;
4. Body-gripping trap with a maximum inside jaw spread of
   seven and one-half (7.5) inches measured parallel with the trigger;
   or
5. A snare.

(2) There shall be no restrictions on the size or type of trap [a
   trap-er-snares] used as a water set.

(3) A trap [or-snares] shall not be set in a trail or path commonly
   used by a human or a domestic animal.

(4) A trapper may use lights from a boat or a vehicle.

Section 9. Harvest Recording. Immediately after taking a river
otter or bobcat, a person shall:

(1) Record, in writing, the species, date taken, county where
   taken, and sex of the river otter or bobcat before moving the car-
   cass from the site where taken. This information shall be logged
   and registered on one (1) of the following:

(a) Hunter’s log section on the reverse side of a license or
   permit;
(b) Hunter’s log from the current hunting and trapping [produced
   in-hunting] guide;
(c) Hunter’s log printed from the Internet;
(d) Hunter’s log available from any KDSS agent; or
(e) An index or similar card [or reasonable facsimile thereof];
   and

(2) Retain and possess the completed hunter’s log [in-in-the
   possession whenever] the hunter is in the field during the current
   season.

Section 10. Checking a River Otter or Bobcat. (1) A person
shall check a harvested river otter or bobcat by:

(a) Calling the toll free number listed in the current [after] hunting
   and trapping guide on the day the river otter or bobcat is harvested
   and

(b) Providing the information requested by the automated
   check-in system; and

(c) Writing the confirmation number given by the auto-
   mated check-in system on the hunter’s log described in Section 9
   of this administrative regulation.

(2) A person wishing to sell the raw fur of a river otter or bobcat
   to a licensed fur processor, fur buyer, or taxidermist or wishing to
   export a river otter or bobcat pelt outside the United States shall
   [call the department’s toll-free information number and re-
   quest a] Convention on International Trade in Endangered Species
   of Flora and Fauna (CITES) tag by providing:

(a) The confirmation number or
(b) The hunter’s or processor’s name; and
(c) The hunter or processor’s phone number.

(3) If a harvested river otter or bobcat leaves the possession of
   a hunter or trapper and does not have a CITES Convention on
   International Trade in Endangered Species of Flora and Fauna
   (CITES) tag attached to it, the hunter or trapper shall attach a
   handmade tag to the carcass, that contains:

(a) The confirmation number;
(b) The hunter or trapper’s name; and
(c) The hunter or trapper’s phone number.

(4) Which contains the confirmation number, hunter’s name, and
   a phone number, to the carcass.

(5) A person shall not provide false information if [when] com-
   pleting the hunter’s log, checking a river otter or bobcat, or creating
   a carcass tag [for a person wishing to sell a river otter or bobcat
   pelt to a licensed fur processor, fur buyer, or export dealer shall call
   the department’s toll-free information number and request a CITES
   tag by providing:

(a) A valid confirmation number as described in subsection (1)
   of this section; and

(b) A street address where the tag is to be mailed.

(5) [The] CITES tag shall be attached to the raw fur, pelt, [or]
   unskinned carcass per the instructions provided by the
department and remain with the pelt until it is processed or
exported outside the United States [processing].

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

Section 11. Transporting and Processing a River Otter or Bob-
cat. (1) A person shall not:

(a) Have in-transport a river otter or bobcat or parts brought into
   Kentucky illegally taken;
(b) Sell the raw fur of a river otter or bobcat [pelts] except to
   a licensed:

(a) [Fur buyer;]
(b) [Fur processor; or]
(c) [Taxidermist].

(2) A taxidermist, fur buyer, or fur processor [or other individual
   who commercially processes river otters and bobcats] shall
   [accept a river otter or bobcat carcass] or any part of a river
   otter or bobcat without a proper carcass tag or
   CITES tag described in Section 10 of this administrative regulation;
   and

(b) Keep the following information from a hunter or trapper;
   1. Name: 

- 440 -
Section 12. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows one (1) of the following:
(a) The name and address of the person setting, using, or maintaining the trap;
(b) A wildlife identification number issued by the department and the 1-800-25-ALEKT department hotline phone number;
(c) A person may apply for a wildlife identification number by:
(a) Accessing the department’s Web site at http://kf.wv.gov/
(b) Calling the department’s information center at 1-800-858-1549.
(3) The following information shall be required for a person to apply for a wildlife identification number:
(a) Name;
(b) Current home address;
(c) Social Security number;
(d) Current phone number;
(e) Date of birth; and
(f) Driver’s license number, if available.
(4) A person shall:
(a) not use a trap tag that has an inaccurate or outdated address;
(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and
(c) Contact the department to provide updated address and phone number.
(5) A wildlife identification number is valid for the life of the holder. [Keep accurate records of the hunter’s name, address, confirmation of CITES tag number, and date received for each covey or bobcat in his possession.]
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to promulgate administrative regulations for hunting and trapping seasons, methods of taking, bag limits, harvest recording procedures, and checking requirements for fur bearing species in Kentucky. KRS 150.410 authorizes metal trap tag requirements.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by this administrative regulation during subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Revenues (+/-): None see (a) and (b) above.

Expenditures (+/-): None see (c) and (d) above.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:030. Water treatment plant and [plants]; water distribution system classification and staffing [systems; certification of operators].


NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.180-223.220 authorizes the cabinet to classify water treatment plants and distribution systems based on size, type, and physical condition and according to the skill, knowledge, and experience needed by the plant operator. KRS 223.160-223.220 establishes a board of certification and authorizes the cabinet to establish a program requiring certification of water system operators. KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use and for the certification of water system operators. 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 standards for the staffing and classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators; and provisions relating to the issuance and renewal of certificates; disciplinary actions; and other provisions necessary for the certification of operators. The Safe Drinking Water Act Amendments of 1996, enacted August 6, 1996 (PL 104-182), include a provision for the certification of operators of public water systems. The regulations to implement the federal law are required no later than January 2005. KRS 150.015(5) authorizes the certification of the federal law. Therefore, there are no federal regulations and this administrative regulation is not more stringent than the federal law or regulation.

Section 1. General Provisions. (1)(a) [Each] public water system shall [ensure that each component of the system is] operated according to the provisions of KRS [Chapter 223 and 224 and 401 KAR Chapter 6 (the administrative regulations of this chapter)].

(b) [Each public water system shall operate its water treatment plant and water distribution system under the supervision of a certified operator who is in direct responsible charge of the system] certified operator shall not [operate] be not required to be [operators are not] required to be a semipublic water system.

(c) Except as provided in subsection (2)(c)(1)(b), (2)(b), and (2)(d) of this section, a public water system shall be operated by [All certified operators, other than an operator in-training operators] and direct [operator certifying] the supervision of a direct responsible charge who holds [shall hold] a valid certificate in a class equal to or higher than that required for the system under [his] supervision. [A certified operator may be an individual who is temporarily assigned to the [water treatment plant] the system operator operated at the plant, or may be a person who is supervising others in the performance of operational procedures at the plant.]

(2) Staffing requirements.

(a) Water distribution systems. [All operational procedures performed within] water distribution system [systems] shall be operated [conducted] by or under the supervision of a distribution system operator certified in a class equal to or higher than the class of the distribution system.

(b) Combination water treatment plants and water distribution systems. A combination water treatment plant or water distribution system shall be classified as [operative procedures at all] Class IA-D, Class IB-D, [and] IB-D. [each] Class IA-D, Class IB-D, and [IB-D] IB-D system classified as a combination system in paragraph 1. of this paragraph [water systems] shall be operated and supervised by or under the supervision of a [certified water system operator] who holds a valid combination or separate water treatment and distribution system operator certificate of the appropriate class or higher and who shall be in direct responsible charge of the system. A certified operator of a Class IA-D combination system shall be at the water treatment plant if water is being treated, unless the operator is performing other system-related duties.

(c) Water treatment plants. A certified operator of a Class IA-D combination system shall be at the water treatment plant if water is being treated, unless the operator is performing other system-related duties.

Class IIA.

(a) Except as provided in subparagraph b. of this paragraph, if water is being treated, [operative procedures at all] a Class IIA water treatment plant shall be operated [conducted] by a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIA who shall be in direct responsible charge of the plant and shall be present at [the] physically located on the premises of the water treatment plant [during the day shift or is otherwise performing system-related duties].

(b) A Class IIA water treatment plant that treats water during more than one (1) shift per day may employ a Class IA-D certified operator for one (1) shift per day, other than the shift worked by the Class IIA operator in direct responsible charge, so long as the Class IIA operator in direct responsible charge shall be on call and shall be able to respond on site within thirty (30) minutes. [Operational procedures conducted during other shifts shall be conducted by or under the supervision of a Class IIA, IIB, or IVA-certified water treatment plant operator.]

Class IIB.

(a) Except as provided in subparagraph b. of this paragraph, if water is being treated, [operative procedures at all] a Class IIB water treatment plant shall be operated [conducted] by a certified Water System Operator certified in a class equal to or higher than Class IIB who shall be in direct responsible charge for the plant and shall be present at the plant or the premises of the plant.
water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIA who shall be in direct responsible charge of the plant and shall be present at the physically located on the premises of the water treatment plant and [when water is being treated or is otherwise performing system-related duties]

5. Class IIIIB. (Operational procedures—A) A Class IIIIB water treatment plant shall be operated/managed by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIIB and who shall be in direct responsible charge of the system.

4. Class IVA.

a. Except as provided in subparagraph b. of this paragraph, if water is being treated/operated/produced—A Class IVA water plant shall be operated/managed by a certified water treatment plant operator who holds a valid Class IVA certificate who shall be in direct responsible charge of the plant and who shall be present and physically located on the premises of the water treatment plant and [when water is being treated or is otherwise performing system-related duties].

b. A Class IVA water treatment plant shall be operated/managed by a certified water treatment plant operator for one (1) shift per day, other than the shift worked by the Class IIIA operator in direct responsible charge, so long as the Class IIIA operator in direct responsible charge shall be on call and shall be able to respond to the plant within thirty (30) minutes.

5. Class IVB. (Operational procedures—A) A Class IVB water treatment plant shall be operated/managed by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IVB who is in direct responsible charge of the system.

6. Bottled Water Systems: A bottled water treatment plant shall be operated by or under the supervision of a certified water treatment plant operator who holds a valid bottled water certification and who is in direct responsible charge of the system.

7. System related duties shall be duties related to the operation and maintenance of the water treatment plant.

3. (a) (2) Certificate personnel. Persons who are under the supervision of the operator in direct responsible charge are encouraged to and may become certified by the cabinet if they meet the requirements of Section 8 of this administrative regulation and provide a properly completed, signed, and dated application, including a completed application for the requested class. The provision shall apply only to personnel who have hands-on drinking water-treatment or distribution system experience.

4. (4) Production personnel. On-site laboratory or distribution personnel and others who have significant routine input into the treatment or distribution of potable water may be certified if they demonstrate to the satisfaction of the cabinet that they meet the education and experience requirements and possess the technical and practical knowledge to perform the procedures involved in the operation of a water treatment plant or water distribution system.

5. A public water system may comply with the staffing requirements of this section by securing a contract operator or an operations firm.

6. If a public water system secures a contract operator or operations firm to operate a treatment plant or distribution system, the public water system shall provide the following information to the cabinet:

1. (a) Name, mailing address, and telephone number of:
   a. [4] The certified operator or contract operations firm;
   b. [2] Principal contact within the firm for certification activities, if different;
   c. Name, [and] certificate type, and certificate number for each certified operator;
   d. [3]

2. [6] Facility name, public water supply identification number, and county location of each system for which the contract or operations firm operator is assuming responsibility;

3. [4]

4. [4] Effective date and expiration date of the contract; and

5. [6] Duties and responsibilities of the contract operator or certified operator for each facility.

6. Minimum-qualifications. Each facility shall be operated/managed by a certified operator for one (1) shift per day, other than the shift worked by the Class IIIA operator in direct responsible charge, so long as the Class IIIA operator in direct responsible charge shall be on call and shall be able to respond to the plant within thirty (30) minutes.

7. The effective date of the change is [insert date].

8. Whether the operator is assuming or relinquishing responsibility for the plant or system.

Section 2. Duties of the Board. In carrying out its responsibilities and with consideration given to the minimum standards and guidelines of the ABC, the board may:

1. Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

2. Review and approve substitutions for education and experience requirements;

3. Review and assist the cabinet in the preparation of examinations;

4. Review and provide comments to the cabinet on proposed drinking water operator certification and administrative regulations;

5. Review and provide comments to the cabinet on proposed training courses and seminars designed to provide continuing education for certified operators;

6. Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and administrative regulations of the Commonwealth;

7. Review the certification administrative regulations of states which are seeking reciprocity with the Commonwealth;

8. Review and provide comments to the cabinet on proposed fees for certification and operators and operators.

Section 3. Application and Examinations. For Certification. (1) Application: An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in Article 1, Section 3. Application shall be made on the form entitled "Drinking Water Operator Certification Application" provided by the cabinet and incorporated by reference in Section 3 of this administrative regulation. Application shall not be filed with the cabinet until the individual has met the minimum qualifications required by this administrative regulation.

(2) Examinations. The board and cabinet shall be jointly responsible for preparation of the examinations which shall be used in determining knowledge, ability, and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications outlined in Section 8 of this administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of at least seventy-five (75) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) Scheduling examinations. Examinations shall be conducted at least annually at places and times set by the cabinet. The cabinet shall provide advance announcements of these examinations.

(4) Examination content. The cabinet shall prepare examinations to address the basic differences in the duties and responsibilities of certified operators, treatment processes, drinking water standards, surface and groundwater sources characteristics, and...
6. Applicant's conduct—Applicants found guilty of any offense involving a violation of the regulations which cause a fit of crime or public disorder shall be subject to disciplinary action including a fine of up to $1,000, or the provisions of Section 5 of the administrative regulation.

6. Confidentiality of examinations—Examinations shall be conducted by the administrative agency. Any person who breaches any examination or reveals all or part of any examination, or reveals all or part of any examination for unauthorized use shall be removed from the examination, subject to the provisions identified in Section 5 of the administrative regulation, or be liable for civil and criminal penalties pursuant to KRS 223.010 or 224.090.

7. Qualifying applicants—Other than those specified in subsection (6), any person who fails to pass an examination may register to take the examination on a regularly scheduled examination date.

Section 4. Issuance of Certificates—1. Issuance of Certificate—Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the board shall issue a certificate and a wallet card to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency.

2. Duration and renewal of certificate—(a) Certificates issued for all certified operators at once, except the limited classification as identified in Section 5 of the administrative regulation, shall be issued with a common expiration date of June 30 of the immediately preceding year and shall remain valid until that date, unless suspended or revoked for cause. Certificates issued between January 1 and June 30 of an even-numbered year will be issued with the next two (2) year renewal period.

(b) Certificates shall expire on June 30 of even-numbered years if not renewed. Operators with expired certificates shall not be licensed to operate or charge a fee under the water system.

(c) Renewal Certificate—Certificates shall be renewed without examination. If the certificate holder has a valid certificate, upon completion of the required, board-approved continuing education hours outlined in subsection (2) of this section and upon submission of a complete renewal application and applicable fees as specified in KRS Administrative Regulation 6.060, the certificate shall be renewed.

(d) Limited certificates shall expire on June 30 of each year. The certificate holder shall renew the limited certificate upon receipt of the renewal application if the certificate holder has complied with all requirements for renewal of the certificate holder. A limited certificate holder shall be issued a written application and applicable fees as specified in KAR 6.060, Section 3.

3. Certification for a higher classification—Certified operators who desire to become certified in a higher classification shall satisfy the requirements of Sections 3 and 8 of this administrative regulation for the higher classification.

4. Certification shall be valid only while the holder uses reasonable care, judgment, and application of the knowledge in the performance of his duties. Certificates shall not be issued or valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

5. Termination of a certificate—(a) If an operator fails to renew his certificate, the certificate shall terminate on the date of expiration. Limited certificates shall terminate one (1) year after the expiration date. Certificates shall terminate on December 31 of the renewal year if they are not renewed. Once a certificate has terminated, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified.

(b) Operators holding a certificate with an expiration date of June 30, 1994, on October 7, 1996 may renew the certificate by fulfilling the renewal requirements specified in subsection (2) of section 100 of this section for each renewal period by June 30, 1997.

6. Reciprocity—Certificates may be issued to a person who holds a valid certificate in another state, territory, or possession of the United States, or a country, if—

(a) The applicant filed a complete application as required in Section 5 of this administrative regulation;

(b) The certificate was earned by passing an examination in the state, territory, or possession of the United States, or a country;

(c) The requirements for certification under which the certificate was issued are no less stringent than the provisions of KRS Chapters 223 and 224 and the administrative regulation; and

(d) Reciprocal privileges are granted to certified operators of the commonwealth.

7. Training requirements—(a) Certified operators shall accumulate continuing education credits approved by the board of certification, prior to applying for certification renewal. Class I and II certified operators shall complete nine (9) hours of training for certification renewal. Class III and IV certified operators shall complete twenty-four (24) hours of training for certification renewal. The request training shall be completed for each renewal during the two (2) year period immediately prior to the certificate expiration date. Training includes correspondence courses, short courses, trade association meetings, and on-the-job training courses.

(b) Certified operators holding separate training and certification to complete the training hours for certification renewal for only one of the certificates issued to the operator, which certificate meets the requirements specified for both certifications in paragraph (a) of this subsection.

(c) Certified operators who teach board-approved training courses shall receive, upon approval by the board, four (4) hours of continuing education credit per hour of instruction.

(d) The criteria for determining whether to approve training, other than the training provided by the board, are—

1. The ability of the course to provide information that will enhance the proper operation and maintenance of water treatment and distribution systems; and

2. The ability of the instructor to properly present the information.

3. In making a determination regarding approval of training courses, the board shall require that the following information be submitted for review: the course name, the date, location, and a list of the instructors, the credit hours being requested, a summary of the course content of sufficient detail to determine relevance and quality of the course, and the name and credentials of each instructor for the course.

4. Board or sub-board may adopt and evaluate, or cause to be evaluated, all board-approved courses.

(e) All course administrators who provide board-approved training shall maintain records on each board-approved course conducted and shall submit the information in the records to the cabinet within thirty (30) days of the conclusion of the course. The information shall include:

1. The course name;

2. The course number assigned by the cabinet;

3. The date and location;

4. The name, certificate type and number, and hours attended by each operator; and

5. The course administrator's signature.

Section 5. Disciplinary Action—(1) A certified operator shall be subject to a disciplinary action identified in this section if he or she, in consultation with the board according to the section, determines that the individual has—

(a) Willfully or negligently violated or caused a violation of this administrative regulation;

(b) Submitted false or misleading information on any document presented to the cabinet, including applications for certification or renewal;

(c) Cheated on an examination, or violated confidentiality of examination questions;

(d) Used fraud or deception in the course of employment as an operator;
Section 6 Classification of Water Treatment Plants and Water Distribution Systems. There the classification system shall be structured with four (4) classes of water treatment plants. Class I, II, III, or IV, which includes two (2) subclasses of treatment types, A or B, and four (4) classes of water distribution systems, Class I, II, III, or IV, and one (1) bottled water class.

1[(a) Class IV is the highest class and subclass A is the highest subclass.

(b) Combined treatment and distribution classifications also exist for Class I and II systems: Class IA-D, Class IB-D, and Class IIB-D.

(2) The water treatment plant and water distribution system classifications correspond to class structure relative to and corresponds with the operator classifications established in 401 KAR 224-40.

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3 A [outlined in Section 7 of this administrative regulation. Operators with separate treatment and distribution certifications may supervise a facility with a combined classification if the certifications are equal to or higher than the system classification.

4(1) Public water system [classifications] shall be classified according to the criteria in subsection (4)(d) established in accordance with the classes listed in subsections (2) and (3) of this section.

(a) [However] the cabinet may change a public water system classification if necessary because of:

<table>
<thead>
<tr>
<th>Class</th>
<th>Water Treatment Plant (Assigned Design Capacity)</th>
<th>Water Distribution System (Population Served)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>Less than 50,000 gallons per day</td>
<td>Less than 1,500</td>
</tr>
<tr>
<td>Class II</td>
<td>50,000 gallons or more per day but less than 500,000 gallons per day</td>
<td>Equal to or greater than 1,500 but less than 15,000</td>
</tr>
<tr>
<td>Class III</td>
<td>500,000 gallons or more per day but less than 3,000,000 gallons per day</td>
<td>Equal to or greater than 15,000 but less than 50,000</td>
</tr>
<tr>
<td>Class IV</td>
<td>3,000,000 gallons or more per day</td>
<td>Equal to or greater than 50,000</td>
</tr>
</tbody>
</table>

(c) Public water systems with more than one (1) treatment plant shall have each treatment plant classified in accordance with the section, and each plant shall be operated in accordance with Section 1 of this administrative regulation.

(a) The treatment plant classifications and designated capacities shall be:

1. Class I—treatment plants which have an assigned design
capacity of less than 6,000 gallons of water per day,
2-Class II.-Treatment plants which have an assigned-design
capacity of 5,000 or more-gallons of water per day but less than
500,000 gallons per day;
3-Class III.-Treatment plants which have an assigned-design
capacity of 500,000 or more-gallons of water per day but less than
2,000,000 gallons per day, and
4-Class IV.-Treatment plants which have an assigned-design
capacity of 2,000,000 or more-gallons of water per day.
(b) Each class of water treatment plan shall be subdivided
according to the type of treatment used by the plant. The subclasses
shall be:
1. Subclass A: a water treatment plant that treats;
a. Surface water or groundwater under the direct influence of
surface water or,
b. Groundwater not under the direct influence of surface water
that uses a component of conventional filtration treatment (plants
which use gravity filtration, except slow-sand filtration as described
in 401 KAR 8:160, as a part of their treatment scheme); and
2. Subclass B: a water treatment plant that treats groundwater
not under the direct influence of surface water and does not em-
ploy any component of conventional filtration treatment (plants
which use treatment processes other than gravity filtration. This
includes the use of slow-sand filtration as described in 401 KAR
8:160 for Class I and II water treatment plants).
(c) Subclass C: Combination treatment and distribution system
shall be classified as [classification(s)] Class IA-D, Class IB-D, or
Class II.D. [Class II.D systems shall be classified as combined-treat-
ment and distribution systems].
(d) Each treatment plan compromising a single public water
system shall be classified in accordance with this section, and
each plant shall be operated in accordance with Section 1 of this
administrative regulation (9-Water treatment plant or system clas-
sification).
1. Class IA-D: Systems which have an assigned-design-capacity
of less than 60,000 gallons of water per day using gravity-filtration,
except slow-sand filtration, as a part of their treatment scheme.
2. Class IB-D: Systems which have an assigned-design-capacity
of less than 60,000 gallons of water per day using slow-sand
filtration or treatment processes other than gravity filtration, and
are responsible for the distribution of treated water.
3. Class II.D: Plants which have an assigned-design capacity
of 500,000 or more-gallons of water per day but less than 500,000
gallons per day using gravity filtration, except slow-sand filtration
as a part of their treatment scheme.
4. Class III.D: Plants which have an assigned-design capacity
of 500,000 or more-gallons of water per day but less than
500,000 gallons per day using slow-sand filtration or treatment
processes other than gravity filtration.
5. Class IV.D: Plants which have an assigned-design capacity
of 2,000,000 or more-gallons of water per day using treatment
processes other than gravity filtration.
6. Water distribution systems—Populations shall be deter-
mined as specified in 401 KAR 8:200.
7. Class IA-D: Distribution systems serving a population less
than 1,500.
8. Class IB-D: Distribution systems serving a population less
to or greater than 1,500.
9. Class II.D: Distribution systems serving a population equal
to or greater than 1,500.
10. Class III.D: Distribution systems serving a population greater
than 1,500.
11. Class IV.D: Distribution systems serving a population greater
than 1,500.
12. A bottled water treatment plant classification shall only
apply to a bottled water system that bottles water for sale.
13. Limited: A limited classification is available to a water
water-treatment facility serving a school or a facility for schools and
seminar water system(s).
14. Special: Special designations may be added to any certifi-
cate if necessary to show competency of the operator for a par-
meter of treatment or operation not covered by the basic require-
ments or standard classification set forth in this section.
15. Public water systems which were reclassified pursuant to
this administrative regulation as in effect on October 7, 1986 shall
comply with the requirements of Section 1 of the administrative
Section 7—Classification of Water-Treatment Plant and Water
Distribution System Operators. Thirteen (13) subclasses of certified
operators are established and designated as Class I through Class IV
for water treatment; Class I through Class IV for distribution, and
limited Each operator classification, except for limited, relates
directly to the corresponding classification of water-treatment plant or
water distribution system outlined in Section 6 of this administra-
tive regulation.
Section 8—Operator Qualifications—Experience, Education, and
Equivalences. (1) Requirements. Applicants shall be examined by
the cabinet regarding education, experience, and knowledge, as
related to the classification of water-treatment plants or water dis-
tribution systems for which the application applies. Applicants shall
pass the required written examination unless granted a waiver to
take an oral examination in accordance with Section 2(2) of the
administrative regulation.
(2) Classification of water-treatment plant operators. Operators
shall comply with the experience and educational requirements of
this subsection prior to applying for certification.
(a) Class IA-D:
1. Completion of high-school or general education develop-
ment (GED) efficiency; and
2. One (1)-year of experience operating a Class IA-D or higher
public water system.
(b) Class IB-D:
1. Completion of high-school or GED efficiency; and
2. One (1)-year of experience operating a Class IB-D or higher
public water system.
(c) Class II-D:
1. Completion of high-school or GED efficiency; and
2. Two (2)-years of experience operating a public water-treat-
ment plant with six (6) months of that experience in a Class IA-D,
IB-D or IVA treatment plant.
(d) Class III-D:
1. Completion of high-school or GED efficiency; and
2. Two (2)-years of experience operating a public water sys-
tem with six (6) months of that experience in a Class IA-D, II-D,
or higher treatment system.
(e) Class IIIA:
1. Completion of high-school or GED efficiency; and
2. Three (3)-years of experience operating a public water-treat-
ment plant with one (1) year in a Class IIIA, IVA, or IIIA treatment
plant.
(f) Class IIIB:
1. Completion of high-school or GED efficiency; and
2. Three (3)-years of experience operating a public water-
treatment plant with one (1) year in a Class IIIA, IIIB, III, or IVA
treatment plant.
(g) Class IVA:
1. A baccalaureate degree from an accredited college or uni-
versity; and
2. One (1)-year of experience operating a Class IVA or IVA
water-treatment plant.
(h) Class IVB:
1. A baccalaureate degree from an accredited college or university, and
2. One (1) year of experience operating a Class IIIA, IIIB, IVA, or IVD water distribution plant.

(i) Limited: An operator of a water treatment facility for a school or for a compu-water supply shall be entitled to apply for a limited certificate of competency for his particular facility, if he has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the particular water treatment facility for which he is responsible.

(3) Certification of water distribution system operators: Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification.

(a) Class ID:
1. Completion of high school or GED efficiency; and
2. One (1) year of experience operating a distribution system.

(b) Class IID:
1. Completion of high school or GED efficiency; and
2. Two (2) years of experience operating a distribution system with six (6) months in a Class IID, IIIID or IVD distribution system.

(c) Class IIIID:
1. Completion of high school or GED efficiency; and
2. Three (3) years of experience operating a distribution system, with one (1) year of that experience in a Class IID, IIIID or IVD distribution system.

(d) Class IVD:
1. A baccalaureate degree from an accredited college or university; and
2. One (1) year of experience operating a Class IIIID or IVD distribution system.

(4) Substitutions:
(a) Applicable education and/or training may be substituted for a portion of the required experience, as specified below:
1. No substitution for Class I or IV.
2. Successful completion of one (1) year of college work may be considered equivalent to one (1) year of experience, limited to one (1) year for Class II and two (2) years for Class III.
3. Education applied to the experience requirement shall not be applied to the educational requirement or used as continuing education hours toward certification renewal.
(b) If applicable, the cabinet may authorize experience to be substituted for education requirements as specified below:
1. One (1) year of experience in active operation of a water system at a Class II level or above shall be considered equivalent to one (1) year of college. Four (4) years of experience may be substituted for the completion of a college degree by a high school graduate or recipient of a GED.
2. One (1) year of board-approved training may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school diploma or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and be requested to appear before the board.
3. Experience applied to education requirements shall not be applied to the experience requirement.

(c) Substitutions of related experience for treatment plant and distribution experience:
1. Experience gained in distribution system operation may be credited as specified in paragraph (a) of this subsection toward fulfillment of the treatment plant experience requirement as follows: two (2) years of distribution experience may be considered equivalent to one (1) year of treatment experience.
2. Experience gained in drinking water treatment plant operation may be credited as specified in paragraph (a) of this subsection toward fulfillment of the distribution system experience requirement as follows: one (1) year of drinking water treatment plant experience shall be considered equivalent to one (1) year of distribution experience.
3. A partial credit, as determined by the board, may be given for operating experience in maintenance, laboratories, other work of drinking water treatment or distribution systems and allied trades.
4. Substitutions for formal education may be as follows: training earned at board-approved operator training schools, seminars, and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work shall equal thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved coursework shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours or college work for one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) classroom hours.

Section 6: Documents Incorporated by Reference. The following documents are referenced and are available from the Cabinet:

1. Drinking Water or Wastewater Operator Certification Application, DEP-6047-8-006, available from the Kentucky Environmental and Public Protection Cabinet, Division of Water, Frankfort, Kentucky.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing prior to August 18, 2009, five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Peter T. Goodmann, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the staffing and classification of water treatment plants and water distribution systems.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that water treatment plants and water distribution systems are aware of the statutory requirement that an operator who has passed a certification examination by the cabinet operates the system or plant.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators. KRS 224.160-253-220 authorizes the cabinet to classify water treatment plants and distribution systems based on size, type, and physical condition and according to the skill, knowledge, and experience needed by the operator.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs water treatment plants and water distribu-
tion systems of the staffing requirements for their class of system or plant.

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

(a) How the amendment will change this existing administrative regulation: The requirements pertaining to the examination and certification of operators are moving to a new chapter, 401 KAR Chapter 11, which is regulated by the Division of Compliance Assistance. The proposed amendment adds a treatment plant classification specific to bottled water systems and clarifies the sub-classifications of water treatment plants.

(b) The necessity of the amendment to this administrative regulation: 401 KAR 8:030 was amended to remove the operator certification requirements. It will be in 401 KAR Chapter 11, and to clarify water plant and distribution system staffing, and to add a bottled water classification.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators. KRS 223.180-223.220 authorizes the cabinet to classify water treatment plants and distribution systems based on size, type, and physical condition and according to the skill, knowledge, and experience needed by the operator.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will be simpler and more effective because it will only address the classification and staffing requirements for water distribution systems and water treatment plants. The details of the operator examination and certification process are in a separate chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2009, there are 481 public water systems, 274 two- to five-unit non-public water systems, 426 public water systems, and seven bottled water systems. There are six regional water treatment systems and five distribution systems, 274 water systems that have both a treatment plant and a distribution system, and 201 water systems that only have a distribution system.

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

(a) List the actions that each of the regulated entities identified in question (5) will have to take to comply with this administrative regulation or amendment: No action is necessary unless the water system is in the process of hiring new operating staff. The regulation simply specifies the plant classification as established in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As there are no fees in this administrative regulation, the clarifications and revisions will not create any cost for the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing an operator certified one classification lower than that required of the plant to operate for the first (1) shift other than the primary shift, a water system may be able to recruit qualified staff and have existing staff qualify for the required certification more quickly. This will result in a water system having the ability to stay in compliance with not only the staffing requirements of 401 KAR Chapter 8 but also the analytical compliance requirements.

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

(a) Initially: No additional cost is anticipated. (b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Federal funds through the Public Water System Supervision (PWSS) grant and Drinking Water State Revolving Loan set-asides.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased in this amended regulation.

(9) TIERING: Is tiering applied? Tiering is applied in that water treatment plant and distribution systems are classified according to rated design capacity or population served. The lower the design capacity or population served, the lower the classification required. There are four classifications of water treatment plants, four classifications of distribution systems, and one bottled water classification. Within the four classifications of water plants there are two sub-classifications based upon the complexity of treatment. Water treatment and distribution processes can vary depending upon the size of the water system they serve or the type of treatment necessary to remove contaminants in the source water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All municipalities, counties, water authorities, water commissions and privately-owned drinking water systems will be affected.

3. Is this a provision of a state or local statute or federal regulation that requires or authorizes the action taken by the administrative regulation? Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Prmacy requirements; KRS 224.10-110 and 223.180-220

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300-12 (DW Revolving Loan Fund); also 40 C.F.R. 142.16 on Special Prmacy requirements.


3. Minimum or uniform standards contained in the federal mandate: US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1419a of the Act). Final guidelines and additions to those guidelines were published in the February 5, 1999 and April 18, 2001 Federal Registers. Minimum standards for certification of operators take into account existing State programs, complexity of the water system, size of the water system, and other
factors that provide an effective program at a reasonable cost. The Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(AMENDMENT)

401 KAR 11:001. Definitions for 401 KAR Chapter 11.

RELATES TO: KRS 223.160-220, 224.01-010(9), 224.10-110, 224.10-110, 224.73-110

STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of wastewater operators. KRS 224.100 authorizes the cabinet to promulgate administrative regulations concerning the certification of water treatment and distribution system operators. This administrative regulation establishes definitions applicable to the certification of wastewater and water operators.

Section 1. Definitions. (1) "Applicant" means a person who has submitted an application to take an examination for certification.

(2) "Board" means;

(a) The Kentucky Board of Certification of Wastewater System Operators; or

(b) The Kentucky Board of Certification of Water Treatment and Distribution System Operators.

(3) "Certificate" is defined by KRS 224 01-010(9).

(4) "Certificate" means a certificate of competency issued by the cabinet stating that the operator has met the requirements for the specified operator classification as established by 401 KAR Chapter 11 of this chapter.

(5) "Certified operator" means an individual who holds an active certified operator's certificate issued in accordance with 401 KAR 11:000.

(6) "Core content" means the information identified as essential by the board for purposes of certification examination and continuing education training.

(7) "Direct responsible charge" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the drinking water treatment plant or distribution system is operated in accordance with accepted practices and with KRS Chapters 223 and 224 and 401 KAR Chapters 8 and 11.

(8) "Operator" means a person involved in the operation of a wastewater treatment plant, wastewater[er] collection system, drinking water treatment plant or drinking water distribution system.

(9)[9] "Primary responsibility" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapter 5 and 11, [the authority to conduct procedures and practices necessary to ensure that the wastewater treatment plant or collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 6 and 11].

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009

FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Julia Kay, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions applicable to the certification of operators.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify terms used in regulations related to the certification of operators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides clear definitions for terms applicable to water and wastewater system operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clear definitions for terms applicable to water and wastewater system 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: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(b) The necessity of the amendment to this administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(d) How the amendment will assist in the effective administration of the statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater treatment and distribution plant operators will be affected by this amended administrative regulation. There are approximately 4,900 operators currently certified by the program. State or local governments that operate water treatment plants, water distribution systems, wastewater treatment plants, or wastewater collection systems will be indirectly affected by this amended administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,
including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators do not need to take any action in response to this administrative regulation.

(b) In complying with the administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this administrative regulation, individuals should not expect to experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because certified operators are affected by the definitions, they may experience benefits as a result of having a clear understanding of the terms applicable to their certification.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of the administrative regulation: Implementation of this administrative regulation is funded through agency receipts and federal funds.

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

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

(9) TIERING: Is tiering applied? This administrative regulation clarifies the definitions applicable to the certification of operators. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation relates to state or local governments that operate water treatment plants, water distribution systems, wastewater treatment plants or wastewater collection systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements; KRS Chapters 223.160-220, 224.10-100, 224.10-110, and 224.73-110.

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

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

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

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

(d) How much will it cost to administer this program for the first year? No additional cost is expected.

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

REVENUES (+/-):
Expenditures (+/-):

Other Explanation: This administrative regulation clarifies the definitions applicable to the certification of certified operators. No fiscal impacts are anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements.

2. State compliance standards. KRS 223.160-220, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1411a of the Act). Final guidelines and additions to those guidelines were published in the Federal Register, 59, 15, 18, 2001 Federal Register. Minimum standards for certification of operators take into account existing State programs, complexity of the water system, size of the water system, and other factors that provide an effective program at a reasonable cost.

Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandates? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(Amendment)

401 KAR 11:010. Board's (Board) of certification.

RELATES TO. KRS 223.160-220, 224.10-110, 224.73-110

STATUTORY AUTHORITY. KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.160-110. This regulation authorizes the cabinet to promulgate administrative regulations concerning the board of certification of wastewater system operators and the certification of wastewater operators. KRS 223.160-220 authorizes the cabinet to promulgate administrative regulations concerning the board of certification for water treatment and distribution system operators and the certification of water treatment and distribution system operators. The administrative regulation establishes the duties of the Kentucky Board of Certification of Wastewater System Operators and the Kentucky Board of Certification of Water Treatment and Distribution System Operators.

Section 1. Duties of the Board. The board shall:

(1) Evaluate the qualifications of applicants and recommend qualified applicants to the cabinet for certification examination;

(2) Review and provide comments to the cabinet on proposed administrative regulations regarding operator certification;

(3) Review and make recommendations to the cabinet on core content for certification examinations and continuing education training for certification renewal;

(4) Review and make recommendations to the cabinet on training proposed to provide continuing education to certified operators. During the evaluation of training courses and seminars, the board shall consider:

(a) The consistency of training material with the core content;

(b) The ability of the training to provide information that supports effective water conveyance, treatment, and quality; and

(c) The ability of the instructor to properly present the training;
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(5)(4) Assist the cabinet in drafting examinations for the certification of operators;
(5)(6) Review and provide comments to the cabinet on proposed fees for the training and certification of operators;
(2)(6) Review applications for reciprocity and recommend to the cabinet the acceptance or denial of the application based on the criteria established in 401 KAR 11:050, Section 1(8); and
(3)(7) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with KRS Chapters 223 and Chapter 224 or, 401 KAR Chapters 5, 8, or 11, or this chapter.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email julia.kays@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the duties of the Kentucky Board of Certification of Wastewater System Operators and the Kentucky Board of Certification of Water Treatment and Distribution System Operators.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the duties of the board and the criteria for approving continuing education courses for purposes of certification renewal.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 223.160-220, 224.10-110, and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators. This administrative regulation establishes standards for the duties of the Kentucky Board of Certification of Wastewater System Operators and the Kentucky Board of Certification of Water Treatment and Distribution System Operators, which are responsible for providing input to the cabinet on the implementation of the certification program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the cabinet to effectively conduct their duties as mandated by KRS 223.160-220 and 224.73-110.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) Whether the amendment will change this existing administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to the Kentucky Board of Certification of Water Treatment and Distribution Operators.
(b) The necessity of the amendment to this administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to the Kentucky Board of Certification of Water Treatment and Distribution Operators.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to the Kentucky Board of Certification of Water Treatment and Distribution Operators.
(d) How the amendment will assist in the effective administration of the statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to the Kentucky Board of Certification of Water Treatment and Distribution Operators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater treatment plant, water distribution or wastewater collection operators, will be indirectly affected by this amended administrative regulation. There are approximately 4,300 operators currently certified by the program. Operators may be indirectly affected because the board makes recommendations to the cabinet related to the implementation of the certification program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, indirectly affected by the certified operators who fail to comply with KRS Chapters 223 and Chapter 224 or, 401 KAR Chapters 5, 8, or 11, or this chapter.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators who fail to comply with this administrative regulation or amendment will be indirectly affected by this administrative regulation. Certified operators do not need to take any action in response to this administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this administrative regulation, individuals should not expect to experience any additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because certified operators are indirectly affected by board recommendations made to the cabinet regarding the implementation of the certification program, they may experience benefits as a result of the board having a clear understanding of their duties and the criteria they shall apply in the performance of their duties.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs are anticipated.
(b) On a continuing basis: No additional costs are anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this administrative regulation is funded through agency receipts and federal funds.

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

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

(9) TIERING: Is tiering applied? This administrative regulation clarifies the duties of the board and the criteria for approving continuing education courses for purposes of certification renewal. Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation relates to states or local governments that operate water or
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

wastewater treatment plants, water distribution or wastewater collection systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300p-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Privacy requirements; KRS 223.160-220, 224.10-100, 224.10-110, and 224.73-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional state or local government revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
(c) How much will it cost to administer this program for the first year? No additional cost is expected.
(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

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

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

Other Explanation: This administrative regulation clarifies the duties of the board and the criteria for approving continuing education courses for purposes of certification renewal. No fiscal impacts are anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300p-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Privacy requirements.

2. State compliance standards. KRS 223.160-220, KRS 224.10-110

3. Minimum or uniform standards contained in the federal mandate. US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1419a of the Act). Final guidelines and additions to those guidelines were published in the February 5, 1999 and April 18, 2001 Federal Registers. Minimum standards for certification of operators take into account existing State programs, complexity of the water system, size of the water system, and other factors that provide an effective program at a reasonable cost. The Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(Regulations - Amendment)

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

RELATES TO: KRS 223.160-220, 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110

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

Section 1. Standards of Professional Conduct. (1) In order to safeguard the life, health, and welfare of the public as the environment and to establish and maintain a high standard of integrity in the certified operator profession, the following standards of professional conduct apply to persons certified in accordance with this 401 KAR Chapter 11Chapter:
(a) A certified operator shall, during the performance of operational duties, protect the safety, health, and welfare of the public and the environment;
(b) A certified operator shall use reasonable care and judgment in the performance of operational duties;
(c) If a certified operator's judgment is overruled by an employer under circumstances in which the safety, health, and welfare of the public or the environment are endangered, the certified operator shall inform the employer of the possible consequences;
(d) A certified operator shall be objective, truthful, and complete in applications, reports, statements, and/or testimony provided to the cabinet; and
(e) A certified operator shall ensure the integrity of the samples that the operator collects, prepares, or analyzes so that results shall be a true representation of water quality.

(2) Proof of certification. While on duty, a certified operator shall carry the cabinet-issued wallet card showing the operator's current certification status.
(3) Maintenance of records. If Information related to the operator's employment or mailing address changes from that provided in the application for certification, the certified operator shall provide written notification to the cabinet within thirty (30) days.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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. Julia Kays, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Kays@ky.gov.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the performance of certified operator duties.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to safeguard the life, health, and welfare of the public and the environment and to establish a high standard of integrity in the certified operator profession.
(c) How this administrative regulation conforms to the content of the authority: This regulation conforms to KRS 223.160-220, 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the duties of an operator as mandated by KRS 223.160-220 and 224.73-110.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.
(b) The necessity of the amendments to this administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.
(d) How the amendment will assist in the effective administration of the statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater treatment plant, water distribution and wastewater collection system operators will be affected by this amended administrative regulation. There are approximately 4,900 operators currently certified by the program.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators as well as state and local governments, will refer to this amended administrative regulation to determine the standards for the performance of certified operator duties.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation, individuals should not expect to experience any additional cost.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators as well as state and local governments, will refer to this amended administrative regulation to gain a clear understanding of the standard of integrity in the certified operator profession. This will help the operators comply with agency standards related to the proper operation of a water or wastewater system.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs are anticipated.
(b) On a continuing basis: No additional costs are anticipated.

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 amended administrative regulation relates to the state or local governments that operate water or wastewater treatment plants, water distribution or wastewater collection systems.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300-g-8 (Operator Certification) and Part E, Section 300-j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Pmncacy requirements: KRS 223.160-220, 224.10-100, 224.10-110, and 224.73-110.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 amended administrative regulation will not generate additional state or local government revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.
(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: This amended administrative regulation establishes standards for the performance of certified operator duties. No fiscal impacts are anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300-g-8 (Operator Certification) and Part E, Section 300-j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Pmncacy requirements.
2. State compliance standards. KRS 223.160-220, 224.10-110
3. Minimum or uniform standards contained in the federal mandate. US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300-g-8, provides the Safe Drinking Water Act (SDWA)
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

guidelines for establishing an operator certification program at the
state level (section 1419a of the Act). Final guidelines and addi-
tions to those guidelines were published in the February 5, 1999
and April 18, 2001 Federal Registers. Minimum standards for certi-
fication of operators take into account existing State programs,
complexity of the water system, size of the water system, and other
factors that provide an effective program at a reasonable cost. The
Final Guidelines in the two Federal Registers cover public health
objectives, anti-backsliding, baseline standards, system/operator
classification, operator qualifications, enforcement, certification
renewal and the resources needed to implement the program.
4. Will this administrative regulation impose stricter require-
ments, 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 applica-
able.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(Amendment)

401 KAR 11:030. Wastewater treatment and collection sys-
tem operators; classification and qualifications.

RELATES TO: KRS 224.10-110, 224.73-110
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110,
224.73-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-
110 authorizes the cabinet to promulgate administrative regulations
concerning the certification of wastewater. This administrative
regulation establishes classification of wastewater treatment and
collection operator certifications and establishes the qualifications
for certification.

Section 1. Classification of Wastewater Operator Certifications.
(1) Wastewater treatment certifications.
(a) Limited certification. As provided in KRS 224.73-110(5), an
operator issued a limited certificate may have primary responsibili-
ty for a school wastewater treatment plant and collection system.
(b) Class I Treatment certification.
1. A Class I treatment operator may have primary responsibili-
ity for a wastewater treatment plant with a design capacity less than
or equal to 50,000 gallons per day.
2. A Class I Treatment operator shall not have primary respon-
sibility for a wastewater treatment plant with a larger design capac-
ity.
(c) Class I Treatment certification with an Operator In Training
designation.
1. A Class I Treatment operator with an Operator In Training
designation may have primary responsibility for a wastewater
treatment plant with a design capacity less than or equal to 50,000
gallons per day
2. A Class I Treatment operator shall not have primary respon-
sibility for a wastewater treatment plant with a larger design capac-
ity.
(d) Class II Treatment certification.
1. A Class II Treatment operator may have primary responsibili-
ty for a wastewater treatment plant with a design capacity less than or equal to two (2) million gallons per day.
2. A Class II Treatment operator shall not have primary respon-
sibility for a wastewater treatment plant with a larger design capac-
ity.
(e) Class III Treatment certification.
1. A Class III Treatment operator may have primary responsibili-
ty for a wastewater treatment plant with a design capacity less than or equal to seven and one-half (7 1/2) million gallons per day.
2. A Class III Treatment operator shall have primary respon-
sibility for a wastewater treatment plant with a larger design capac-
ity.
(f) Class IV Treatment certification. A Class IV Treatment op-
erator may have primary responsibility for a wastewater treatment
plant of any design capacity.
(2) Wastewater collection certifications.
(a) Class I Collection certification.
1. A Class I Collection operator may have primary responsibili-
ty for a wastewater collection system that transports wastewater to
a treatment plant with a design capacity of less than or equal to
50,000 gallons per day.
2. A Class I Collection operator shall not have primary responsi-

bility for a wastewater collection system that transports wastewater
to a treatment plant with a larger design capacity.
(b) Class I collection certification with an Operator in Train-
ing designation.
1. A Class I Collection operator with an Operator in Training
designation may have primary responsibility for a wastewater col-
lection system that transports wastewater to a treatment plant with
a design capacity of less than or equal to 50,000 gallons per day.
2. A Class I Collection operator with an Operator in Training
designation shall not have primary responsibility for a wastewater
collection system that transports wastewater to a treatment plant
with a larger design capacity.
(c) Class II Collection certification.
1. A Class II Collection operator may have primary responsibili-
ty for a wastewater collection system that transports wastewater
to a treatment plant with a design capacity of less than or equal to
two (2) million gallons per day.
2. A Class II Collection operator shall not have primary respon-
sibility for a wastewater collection system that transports wastewa-
ter to a treatment plant with a larger design capacity.
(d) Class III Collection certification.
1. A Class III Collection operator may have primary responsibili-
ty for a wastewater collection system that transports wastewater
to a treatment plant with a design capacity of less than or equal to
seven and one-half (71/2) million gallons per day.
2. A Class III Collection operator shall not have primary re-
sponsibility for a wastewater collection system that transports wastewa-
ter to a treatment plant with a larger design capacity.
(e) Class IV Collection certification. A Class IV Collection oper-
ator may have primary responsibility for any wastewater collection
system.

Section 2. Wastewater Operator Qualifications: Experience, Ed-
cuation, and Equivalencies. An individual desiring to become a
certified operator shall meet the following minimum qualifications
prior to the cabinet approving the individual to take a certification
examination as provided in 401 KAR 11:050.

(1) The education and experience requirement for each class of
wastewater treatment certifications is as follows:
(a) Limited certification.
1. Education. A minimum level of education shall not be re-
quired.
2. Experience. A minimum level of experience shall not be
required.
(b) Class I Treatment certification.
1. Education. A high school diploma or general education de-
velopment (GED) certificate shall be required; and
2. Experience. One (1) year of acceptable operation of a
wastewater treatment plant shall be required.
(c) Class I Treatment certification with an Operator in Training
designation.
1. Education. A high school diploma or general education de-
velopment (GED) certificate shall be required; and
2. Experience. Experience shall not be required.
(d) Class II Treatment certification.
1. Education. A high school diploma or general education de-
velopment (GED) certificate shall be required; and
2. Experience. Two (2) years of acceptable operation of a
wastewater treatment plant shall be required.
(e) Class III Treatment certification.
1. Education. A high school diploma or general education de-
velopment (GED) certificate shall be required; and
2. Experience. Three (3) years of acceptable operation of a
wastewater treatment plant with one (1) year of that experience
in a wastewater treatment plant with a design capacity greater than
50,000 gallons per day shall be required.
(f) Class IV Treatment certification.  
1. Education. A baccalaureate degree in engineering, science, or equivalent shall be required; and  
2. Experience. At least five (5) years of acceptable operation of a wastewater treatment plant shall be required.  
   a. Three (3) years of the required experience [shall be] in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day shall be required.  
   b. At least two (2) years of primary responsibility in a wastewater treatment plant with a design capacity greater than two (2) million gallons per day shall be required.  
(2) The educational and experience qualifications for wastewater collection systems shall be as follows:  
   (a) Class I Collection certification.  
      1. Education. A high school diploma or general education development (GED) certificate shall be required; and  
      2. Experience. One (1) year of acceptable operation of a wastewater collection system shall be required.  
   (b) Class I Collection certification with an Operator in Training designation.  
      1. Education. A high school diploma or general education development (GED) certificate shall be required; and  
      2. Experience. Experience shall not be required.  
   (c) Class II Collection certification.  
      1. Education. A high school diploma or general education development (GED) certificate shall be required, and  
      2. Experience. Two (2) years of acceptable operation of a wastewater collection system shall be required.  
   (d) Class III Collection certification.  
      1. Education. A high school diploma or general education development (GED) certificate shall be required; and  
      2. Experience. Three (3) years of acceptable operation of a wastewater collection system with one (1) year of that experience in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than 50,000 (or equal to two (2) million) gallons per day shall be required.  
   (e) Class IV Collection certification.  
      1. Education. A baccalaureate degree in engineering; environmental technology; biological, physical, or chemical sciences; or equivalent shall be required; and  
      2. Experience. At least five (5) years of acceptable operation of a wastewater collection system shall be required.  
      a. Three (3) years of the required experience [shall be] in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than two (2) million gallons per day shall be required.  
      b. At least two (2) years of primary responsibility in a wastewater collection system that transports wastewater to a treatment plant with a design capacity of greater than two (2) million gallons per day shall be required.  
(3) Substitutions. The cabinet shall allow the following substitutions for the qualifications specified in subsections (1) and (2) of this section:  
   (a) Education in environmental engineering; environmental technology; and biological, physical, or chemical sciences shall be substituted if the substitution does not exceed fifty (50) percent of the required experience for up to fifty (50) percent of the experience requirement as follows:  
      1. An associate degree may substitute for two (2) years of experience.  
      2. A baccalaureate degree may substitute for four (4) years of experience.  
      3. Education that did not result in a degree in a related field may be substituted for the required experience as follows:  
         a. Ten (10) contact hours, one (1) CEU, or one (1) post-secondary education quarter hour with a passing grade may substitute for 0.022 years of experience  
         b. One (1) post-secondary education semester hour with a passing grade may substitute for 0.033 years of experience  
      4. Education applied to the experience requirements established in subsections (1) and (2) of this section shall not be applied to the education requirement.  
   (b) Experience may be substituted for the educational requirement as follows:  
      1. One (1) year of operational experience at a treatment plant may substitute for one (1) year of education.  
      2. One (1) year of collection system experience may substitute for one (1) year of education.  
      3. The cabinet may allow partial substitution of the education requirement by experience in maintenance, laboratory analysis or other work related to the collection, treatment or distribution of drinking water or wastewater. To establish how much experience shall be accepted, the cabinet shall determine the degree of technical knowledge needed to perform the work and the degree of responsibility the applicant had in the operation of the system.  
      4. Experience applied to the education requirement established in subsections (1) and (2) of this section shall not be applied to the experience requirement.  
   (c) Collection system and treatment experience may be substituted as follows:  
      1.a. Four (4) years of collection system experience shall be considered equivalent to one (1) year of treatment experience.  
         b. This substitution shall not account for more than fifty (50) percent of the experience required by subsection (1) of this section.  
      2. One (1) year of treatment experience shall be considered equivalent to one (1) year of collection system experience.

HENRY 'HANK' LIST, Deputy Secretary  
For LEONARD K. PETERS, Secretary  
APPROVED BY AGENCY: July 13, 2009  
FILED WITH LRC: July 14, 2009 at 10 a.m.  
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 18, 2009 at 9 a.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Julia Keys, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Keys@ky.gov.  

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact Person: Aaron Keatley, Director  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation establishes standards for the classification and qualifications of certified operators.  
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum qualifications for an individual before they can take a certification examination. It also defines the substitutions that may be used to meet the minimum qualifications for certification.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KHS 224.10-110 and 224.11-110 which authorizes the cabinet to implement a certification program for wastewater system operators. This administrative regulation establishes standards for classification and qualification of certified operators.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the minimum qualifications for certifica-
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 relates to state or local governments that operate wastewater treatment plants or collections systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.73-110.

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

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

(b) How much will it cost to administer this program for the first year? No additional cost is anticipated.

(c) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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

Revenues (+/-): Expenditures (+/-): Other Explanation: This amended administrative regulation clarifies the classification and qualifications for certified operators. No fiscal impacts are anticipated.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(Amendment)


RELATES TO: KRS 223.160-220, 224.10-110, 224.10-420(2), 224.73-110

STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of water and wastewater operators. This administrative regulation establishes application and examination procedures; provisions relating to certificate issuance, renewal, and termination; reciprocity; training; and disciplinary actions.

Section 1. Application and Examination for Certification. (1) An individual desiring to become a certified operator shall first meet the qualifications specified in 401 KAR 11:030 or 11:040 and then pass an examination administered by the cabinet.

(2)(a) An applicant for certification shall complete the Registration Form for Exams and Training and Education and Experience Documentation Form and shall submit them and the certification application fee to the cabinet.

(b) An application shall not be submitted to the cabinet unless the applicant has met the qualifications for examination.

(3)(a) After receipt of the completed forms and the application fee, the cabinet, considering the recommendation of the board, shall determine if the applicant meets the qualifications specified in 401 KAR 11:030 or 11:040.

(b) If the applicant meets the qualifications, the cabinet shall
approve the application and notify the applicant of the scheduled exam date.

(4)(a) Upon the applicant’s completion of the examination, the cabinet shall notify the applicant of the applicant’s examination score.

(b) A score of at least seventy (70) percent is required to pass the examination.

(5)(a) The cabinet shall issue a certificate and a wallet card to an applicant who successfully passes the certification examination.

(b) The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.

(6) An applicant who fails to pass an examination may apply to take the examination again by resubmitting the "Registration Form for Exams and Training" and the application fee to the cabinet.

(7)(a) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet.

(b) A request for a review shall be submitted to the cabinet in writing.

(c) A certificate shall [may] be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the U.S. [United States] if:

(a) The requirements for certification under which the certificate was issued are not less stringent than the requirements for certification [established] in 201 KAR 223, 120-800, 220 Chapter 224, 73-110, and 401 KAR Chapter 11; and

(b) The applicant submits an Application for Reciprocity form and the reciprocity fee to the cabinet.

Section 2. Duration of Certification. (1)(a) Wastewater certifications shall expire on June 30 of odd-numbered years unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Wastewater certifications issued on or after January 1 and on or before June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.

(2)(a) Drinking water certifications shall expire on June 30 of even-numbered years unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Drinking water certifications issued on or after January 1 and on or before June 30 of an even-numbered year shall expire on June 30 of the next even-numbered year.

(3)(a) An expired certification shall continue in force pending the administrative processing of a renewal if the certified operator has complied with the renewal requirements of Section 3 of this administrative regulation.

(b) A certification continued in accordance with this subsection [under this paragraph] shall remain fully effective and enforceable.

(4)(a) A certification shall terminate if not renewed on or before December 31 of the year the certification expired.

Section 3. Continuing Education and Certification Renewal. (1) A certified operator who is not designated an Operator in Training may renew a certification without examination [provided] the operator has:

(a) Cumulated the training hours required in subsection (5) of this section; and

(b) Submitted a completed Application for Certification Renewal form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet's Web site.

(2)(a) A certified operator who is designated an Operator in Training may renew a certification without examination if the operator has satisfied the requirements of subsections (1)(a) and (b) of this section and has acquired one (1) year of acceptable experience prior to expiration of the certification.

(b) Upon renewal, the operator's certification status shall not continue to [will no longer] be designated an Operator in Training.

(3) If the Application for Certification Renewal form, which is incorporated by reference in Section 5 of this administrative regulation, and the renewal fee are not received by the cabinet or submit-

ed electronically by June 30 of the year the certification expires, a late renewal fee shall be paid.

(4)(a) A terminated certification shall not be renewed.

(b) An operator whose certification is terminated and who wishes to become recertified shall reapply for and pass an examination in accordance with Section 1 of this administrative regulation.

(5)(a) Prior to applying for certification renewal, a certified operator shall complete the required number of cabinet-approved training hours.

(b) A certified operator holding multiple wastewater certifications issued in accordance with this administrative regulation [both a treatment and a collection certificate] shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(c) A certified operator holding multiple wastewater certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(d) Hours earned prior to initial certification shall not count toward certification renewal.

(e) Wastewater training hours shall expire two (2) years from the date earned.

(f) Water training hours shall be completed for each renewal during the two (2) year period immediately prior to the certificate expiration date.

1. Certified operators with a Bottled Water, Limited, Class I or II Treatment, Collection, or Distribution [for Class I or II Collection] certification shall complete twelve (12) hours of approved training.

2. Certified operators with a Class III or IV Treatment, Collection, or Distribution [for Class III or IV Collection] certification shall complete twenty-four (24) hours of approved training,

(4)(a) A training provider seeking approval of certified operator training shall submit to the cabinet a completed Application for Approval of Courses for Continuing Education Credit form.

(b) Upon completion of the approved training, the provider shall submit to the cabinet a completed Continuing Education Activity Report form.

(c) A certified operator who has attended training that has not been submitted to the cabinet for approval may apply for training approval as established [provided] in paragraph (a)[a] of this subsection.

(d) A certified operator who provides approved training shall [may] receive [upon approval of the cabinet] hour-for-hour credit for actual instruction time.

(7)(a) Cabinet approval of training shall expire two (2) years following the date of approval.

(b) The cabinet, in consultation with the board, shall extend the approval expiration date if:

1. The provider requests the extension in writing; and

2. The training has not changed from the previous approval.

Section 4. Disciplinary Action. (1) A certified operator shall be subject to disciplinary action if the cabinet, in consultation with the board, determines that the certified operator has not satisfactorily performed the operator’s duties in accordance with 401 KAR 11:020.

(2)(a) A written complaint received by the board or cabinet regarding a certified operator, unless duplicitous or frivolous, and violations of 401 KAR 11:020 that are identified by the cabinet shall be evaluated by the board.

(b) The certified operator shall appear before the board if requested by the board.

(3) The board shall make a recommendation to the cabinet regarding disciplinary action. The board may recommend that disciplinary action not taken or recommend that a disciplinary action be taken if the board determines that the certified operator has not satisfactorily performed operator duties in compliance with 401 KAR 11:020.

(4)(a) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for certification application and examination procedures, issuance and renewals of certificates; and defines the process for taking disciplinary actions against noncompliant operators.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to clarify the provisions necessary for the certification of operators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 223.160-220, 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators. This administrative regulation establishes standards for application and examination procedures; issuance and renewals of certificates for the certification of operators; and defines the process for taking disciplinary actions against noncompliant operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the certificate application and examination procedures, issuance and renewals of certificates and disciplinary actions as mandated by KRS 223.160-220 and 224.73-110.

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

(a) How the amendment will change this existing administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(b) The necessity of the amendment to this administrative regulation: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(d) How the amendment will assist in the effective administration of the statutes: The amendments contained in this proposed administrative regulation are to apply the conditions of this administrative regulation to drinking water treatment and distribution operators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater treatment plant, water distribution or wastewater collection system operators, as well as operators seeking certification, will be affected by this amended administrative regulation. There are approximately 4,300 operators currently certified by the program. State or local governments that operate water or wastewater treatment plants, watershed or wastewater collection systems will be indirectly affected by this amended administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators, state and local governments, as well as operators seeking certification, will refer to this amended administrative regulation to determine the necessary procedures for obtaining and maintaining their certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) to do so: Under this amended administrative regulation, individuals should not expect to experience any additional cost. Limited license will remain in effect for two years rather than the one year currently provided. This will reduce the need to renew the license as frequently and eliminate the need to retest if continuing education hours are obtained.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators, state and local governments, will refer to this amended administrative regulation to gain a clear understanding of the necessary procedures for obtaining and maintaining their certification. Individuals that become certified are authorized to operate a water or wastewater system as provided in KRS 223.160-220 and 224.73-110.

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

(a) Initially: No additional costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amended administrative regulation is funded through agency and federal funds.

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

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

(9) TIERING: Is tiering applied? This amended administrative regulation clarifies the procedures necessary for obtaining and maintaining certification. Tiering is applied consistent with the various certification levels that are tiered based on the size of the water or wastewater treatment plant, water distribution or wastewater collection system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amended administrative regulation relates to state or local governments that operate water or wastewater treatment plants, water distribution or wastewater collection systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300T-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements; KRS 223.160-220, 224.70-100, 224.10-110, and 224.73-110.

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

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

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

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

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

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

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

Other Explanation: This amended administrative regulation clarifies the procedures necessary for obtaining and maintaining certification. No fiscal impacts are anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300T-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements.

2. State compliance standards. KRS 223.160-220, KRS 224.10-110

3. Minimum or uniform standards contained in the federal mandate. US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1419a of the Act). Final guidelines and additions to those guidelines were published in the February 5, 1999 and April 18, 2001 Federal Registers. Minimum standards for certification of operators take into account existing State programs, complicity of the water system, size of the water system, and other factors that provide an effective program at a reasonable cost. The Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

RELATES TO. KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1-60.19, 60.40-60.316, 60.330-60.506, 60.540-60.548, 60.560-60.566, 60.580-60.584, 60.600-60.3078;

Tables 1-5, 60.4101-60.4120, Table 1 [60.420-60.506, 60.640-60.668, 60.680-60.4420], 42 U.S.C. 7411, EO 2009-528;

STATUTORY AUTHORITY. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120.

NECESSITY, FUNCTION, AND CONFORMITY. KRS 224.10-100(5) authorizes the cabinet [Environmental and Public Protection Cabinet] to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2009-528, effective June 12, 2009, establishes the Energy and Environment Cabinet. This administrative regulation adopts the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. 60.1 through 60.19, 60.40 through 60.316, 60.330 through 60.506, 60.540 through 60.548, 60.560 through 60.568, 60.580 through 60.648, 60.660 through 60.3078, Tables 1-5, and 60.4101 through 60.4420, Table 1 [60.420 through 60.506, 60.540 through 60.668, and 60.680 through 60.4420] Delegation of implementation and enforcement authority for the federal NSPS program from the U.S. [Environmental Protection Agency] Environmental Protection Agency to the Commonwealth of Kentucky is provided (under) 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Energy and Environment [Environmental and Public Protection] Cabinet unless a specific provision of the Part 60 NSPS states that the U.S. [United-States] Environmental Protection Agency retains enforcement authority.

(2) "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 through 60.19 (Subpart A), 60.40 through 60.316 (Subparts D through EE), 60.330 through 60.506 (Subparts GG through XX), 60.540 through 60.548 (Subpart BBB), 60.560 through 60.568 (Subpart DDD), 459 -
Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. 60.1 through 60.19 (Subpart A), 60.40 through 60.318 (Subpart D through EE), 60.330 through 60.506 (Subpart G through XX), 60.540 through 60.548 (Subpart BBB), 60.565 through 60.568 (Subpart DDDD), 60.580 through 60.648 (Subparts FFF through LLL), 60.665 through 60.670, 60.685 through 60.686 (Subpart NNN through PPP), and 60.4101 through 60.4420, Table 1, (Subparts HHHH through KKKK), 60.450 through 60.506, 60.540 through 60.568, and 60.685 through 60.4420, Subparts A through XX, BBB through NNN, and PPP through KKKK. These sources shall comply with the following:

1. The applicable provisions codified in 40 C.F.R. 60.1 through 60.19 (Subpart A), "General Provisions";
2. The applicable methods, procedures, and reporting requirements codified in 40 C.F.R. Part 60, Appendices A through D and F; and
3. The applicable Part 60 NSPS.

HENRY C.A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 14, 2009
FILED WITH LRC: July 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment will be held on August 26, 2009 at 10 a.m. (local time) in Conference Room 201B of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing five (5) working days prior to the hearing of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) working days prior to the hearing.

If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on August 31, 2009. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

PERSONAL CONTACT: Ty Martin, Environmental Technologist II, Division for Air Quality, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666, and email ty.martin@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ty Martin, Environmental Technologist II
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation adopts the New Source Performance Standards for New Stationary Sources, as published in 40 C.F.R. Part 60 (Part 60 NSPS).
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of 40 C.F.R. Part 60 NSPS.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements of this administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the federal Part 60 NSPS requirements shall comply with the administrative regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation will be amended to include 40 C.F.R. Part 60, Subpart OOO, which had previously been regulated by 401 KAR 60-707.
(b) The necessity of the amendment to this administrative regulation: On April 28, 2009, EPA published a revised NSPS for 40 C.F.R. Part 60, Subpart OOO, Nonmetallic Mineral Processing Plants, which had been regulated previously under 401 KAR 60-707. In order to keep Subpart OOO no less stringent than the federal standards, 401 KAR 60-707 will be repealed and the revised standard will be regulated under 401 KAR 60-705.
(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 60 NSPS rules and standards in order to retain these authorities from the U.S. EPA.

(3) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 60 requirements will continue to work with the state rather than the U.S. EPA. Sources subject to Subpart OOO will now be combined in one regulation with the other Part 60 NSPS.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with the federal Part 60 NSPS requirements and this regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities are already subject to the federal Part 60 NSPS. There are no additional costs involved in compliance with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. The Cabinet will no longer have to amend 401 KAR 60-707 on a routine basis in order to continue with delegation of authority.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Cabinet will not incur any initial costs for the implementation of this administrative regulation.
(b) On a continuing basis: There will be no additional continuing costs for the implementation of this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will continue to be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 60 NSPS source categories.
FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to affect any source subject to the 40 C.F.R. Part 60 standards that may be operated by state or local governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 42 U.S.C. 7411.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate new revenue.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate new revenue.
   (c) How much will it cost to administer this program for the first year? Costs will be included in the Cabinet's normal day-to-day operating budget.
   (d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Cabinet's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.
Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 42 U.S.C. 7411(c).
2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 requires that the U.S. EPA promulgate federal standards of performance for new sources within certain categories as published by the administrator.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is no more stringent than the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed.

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


RELATES TO: KRS 329.010 - 329.030, 42 U.S.C. 3796gg-8
STATUTORY AUTHORITY: KRS 15A.160, 329.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 329.030(6) require the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations establishing professional standards for detection of deception examiners. This administrative regulation establishes the practice requirements for detection of deception examiners.

Section 1. Definitions. (1) "Detection of deception examiner" is defined by KRS 329.010(1).
   (2) "Secretary" is defined by KRS 329.010(5).
   (3) "Sex crime" means an offense or attempt to commit an offense defined in:
      (a) KRS Chapter 510;
      (b) KRS 530.020;
      (c) KRS 530.064(1)(a);
      (d) KRS 531.310; or
      (e) KRS 531.320.
   (4) "Thorough investigation" means:
      (a) Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;
      (b) Submitting any evidence to the laboratory if appropriate; and
      (c) Pursuing any leads identified during the investigation.

Section 2. Advertising, soliciting, and discrimination are prohibited as follows:
   (1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.
   (2) An examiner shall not publish or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.
   (3) An examiner shall not claim superiority over other examiners as to skill or method of practice.
   (4) An examiner shall not divide fees, or agree to split or divide the fees received for detection of deception services with any person for bringing or referring a client.
   (5) An examiner shall not attempt to solicit business as a result of information or statements obtained from an examinee relating to the examinee's past employment or employer.
   (6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of the person.

Section 3. (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner shall obtain the written consent of the examinee to undergo the examination.
   (2) The examiner shall not conduct an examination on any person whom the examiner believes, through observation or any other credible evidence, to be physically or psychologically unfit for the examination at that time.
   (3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress.
   (4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any questions or pertinent questions.
   (5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination.
   (6) The examiner shall not conduct an examination if the examiner has reason to believe the examination is intended to circumvent or defy the law.
   (7) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph examination report which is misleading, biased, or falsified in any way. Each report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.
   (8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.
   (9) During deception tests, the examiner shall not render a conclusive truthful or deceptive (verbal or written) decision, based on chart analysis, as to the truthfulness or deception of the examinee without presenting the same relevant test questions to the examinee [having administered those (3) or more times]polygraph charts using the same relevant test questions].
1. If [after] the examinee has submitted to fewer than three (3) presentations of each relevant question, [chart, the examinee refuses to submit to additional charts,] the results shall be recorded as no opinion.

2. The fact of the examinee's refusal shall be noted in the verbal or written report of the examination.

(10)(a) All questions and answers asked during a polygraph examination shall be marked on the polygraph chart at the appropriate place on the chart where the question was asked and the answer given.

(b) If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file.

(c) Each polygraph chart shall be identified as to the person being examined, the examiner, time and date of the examination, and the chart number.

(11)(a) The examinee shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields.

(b) The examiner may describe the appearance or behavior of the examinee.

1. The information is pertinent to the examination; and

2. The examiner refrains from offering any diagnosis which the examiner is professionally unqualified to make.

(12)(a) The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless the examiner is thoroughly familiar with the techniques and procedures used by the other examiner.

(b) An examiner may testify concerning the examiner's independent examination of the same examinee.

(13) An examiner shall report to the cabinet any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or 502 KAR Chapter 20.

Section 4. Detection of Deception Examinations of Victims of Sex Crimes. (1) The victim of a sex crime has the right to refuse examination and shall be informed of this right.

(2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.

(3) Except as provided by subsection (4) of this section, examination of a sex crime victim shall not be conducted unless:

(a) The victim's consent to the examination is in writing and received by the examiner before the examination begins;

(b) The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; or

(c) After an [a thorough] investigation, the suspect cannot be identified or located;

(d) There is a clear issue to test on based on:

1. Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;

(2) Submitting any evidence to the laboratory if appropriate, and

(3) Pursuing any leads identified during the investigation (a thorough investigation); and

(d) Before the examination, the Investigating officer has provided the examiner with a signed, written document:

1. Describing any inconsistencies in the victim's allegation;

2. Stating if any inconsistency can be substantiated by existing physical or testimonial evidence;

3. Listing investigative strategies that were have been used in the case;

4. Declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination; and

5. Containing no reference to whether the victim is [or is not] behaving like a typical sexual assault victim[i.e., scientific evidence that has shown that behaviors of individual sexual assault victims vary widely and therefore cannot be described as typical].

(4)(a) A sex crime victim may request examination. The Investigator may arrange for the requested examination and the examination may be conducted if:

1. The request is voluntary and at the victim's own initiative;

2. It is documented that the request is by the victim;

3. The written request is signed by the victim;

4. The written request is received by the examiner before the examination begins; and

5. The victim has an opportunity to consult with a victim's advocate prior to the examination.

(5) An examination shall not be considered to be at the victim's request if the victim agrees to the examination in response to a request by the investigator to take an examination.

(5) Every reasonable attempt shall be made to avoid visible and audio contact between the victim and suspect during the examination process. If contact is made, the examination shall be postponed and rescheduled for another date and time.

(6) The victim shall be advised at the victim's request, a victim's advocate shall allow to watch the examination from a two (2) way mirror or by closed circuit television in real time. The examiner and the victim shall be the only two (2) individuals inside the examination room during the entire examination process, except if a language interpreter is required.

(7) At the beginning of the examination, the examiner shall advise the victim that the examination is a stressful experience and that the victim feels uncomfortable at any time with the polygraph process, it shall be terminated immediately.

(8) The victim shall not be interrogated under any circumstance. A post-examination debriefing shall be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim shall be advised that upon the victim's request, a victim's advocate shall be allowed to watch the debriefing session from a two (2) way mirror or closed circuit television.

(9) The testing format utilized shall be a researched companion/control question format (CCT). The relevant questions shall be answered with a "yes" answer.

(10) An irrelevant/relevant question format shall not be utilized on any sex crime victim.

(11) Past sexual history of the victim shall not be explored by the examiner.

(12) Sex related comparison/control questions shall not be asked of the victim. Lie comparison questions excluding sex shall be used on sex crime victims.

(13) At the end of the examination, the examiner shall advise the victim of the results.

Section 5. (1) The examiner shall maintain on file for at least two (2) years all records, papers, polygraph charts, consent to examination forms, notes, question lists or sheets, and reports of polygraph examinations that the examiner conducted.

(2)(a) Except as provided in paragraph (b) of this subsection, an examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations that the examiner conducted during the two (2) year period prior to the date of the request.

(b) Without the approval of the employing examiner, agency, firm, or company, the examiner shall not remove any of the material contained in the file or make notes of any of the information contained therein.

(3) The cabinet shall, if there is just cause, inspect the records, reports, polygraph charts, and all paperwork connected with an
examination to determine if an examiner is conducting examinations in accordance with the provisions of KRS Chapter 329 and 502 KAR Chapter 20.

Section 8. Continuing Education Requirements. (1) Each examiner shall complete at least twenty (20) hours of instruction in subject matter relating directly to the polygraph profession during the licensing year. Acceptable polygraph training for purposes of this requirement shall be:

(a) Polygraph seminars, courses, or other training sponsored by any national polygraph association, state polygraph association, or American Polygraph Association accredited polygraph school,
(b) Any training in polygraphy sponsored by a law enforcement training academy approved by the secretary or his designee if the instructor is certified by the Kentucky Law Enforcement Council,
(c) Training received during the course of internship established in 502 KAR 20-030 and approved by the Secretary in writing;
(d) Any training directly relating to polygraph subject material which has been preapproved by the secretary or his designee in writing.

(2) Each examiner submitting a request to renew the examiner's license for the following year shall also submit proof of completion of the required training such as a copy of the diploma, certificate, or other documentation confirming instruction and attendance.

RODNEY BREWER, Commissioner
APPROVED BY AGENCY. July 15, 2009
FILED WITH LRC: July 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009, at 2 p.m. at the Kentucky State Police Headquarters, 919 Versailles Rd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Emily Perkins

(1) Provides a brief summary of:
(a) What this administrative regulation does: Establishes the standard for deception examiners in giving deception examinations.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with state and federal mandates as well as accepted professional standards regarding proper administration of deception examinations and how examiners detect deceptive responses.
(c) How this administrative regulation conforms to the standards of the authorizing statutes: It establishes the method by which Kentucky State Police deception examiners administer deception examinations and assess whether the examinee is providing deceptive answers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes clear practices for deception examiners in administer and assess deception examinations using standards established in state and federal statutes. It clarifies the requirements in administering deception examinations to reported victims of sexual abuse and assault contained in the Violence Against Women Act.

(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 clarifies that there is no method to standardize the definition of a complete investigation. It also establishes the manner in which deception examiners must administer questions before a deception examiner can conclusively determine the veracity of answers.
(b) The necessity of the amendment to this administrative regulation: The previous language regarding the methods of administering deception tests was unclear in that it failed to state the commonly accepted industry standard of determining the veracity of answers.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies how deception examiners administer deception examinations and conclusively determine the veracity of answers.
(d) How the amendment will assist in the effective administration of the statutes: This amendment removes previous ambiguity regarding conclusively determining the veracity of answers.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky State Police, Department of Criminal Justice Training, all POPS certified peace officers, and all law enforcement agencies using deception examinations during criminal investigations.
(f) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) The list of each of the regulated entities identified in question (3) that will have to take or comply with this administrative regulation or amendment. The actions of the examinees shall comply with and any agencies employing them will need to ensure that they comply.
(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): Deception examinations administered to reported sex abuse victims will comply with federal law and deception examinations will now adhere to the accepted industry standard.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(d) Provides an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(f) TIERING: Is tiering applied? Tiering is not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State Police; Department of Criminal Justice Training and any other agency that requires deception examinations for employment applications or investigative purposes.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Violence Against Women Act (P.L. 109-182); KRS 15A.163 and 329.030(6).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency
TRANSPORTATION CABINET
Department of Highways
Division of Planning
(Amendment)

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits.

RELATES TO: KRS 177.9771, 189.230
STATUTORY AUTHORITY: KRS 177.9771(1), (2), (9)(10), 189.230(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.9771(10) authorizes the Secretary of the Transportation Cabinet to promulgate administrative regulations necessary to administer the provisions of KRS 177.9771, 177.9772, 177.979, and 189.230. KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways that[which] meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.9771(1) requires that roads that[which] are currently, or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system. KRS 189.230(2) authorizes the Department of Highways to prescribe a gross vehicle weight limit for a bridge lower than a limit prescribed in KRS 177.9771 on a bridge that[which] may be damaged or destroyed to the point of catastrophic failure if gross vehicle weight exceeds certain limits. Further, KRS 177.9771(9) requires the Transportation Cabinet Secretary to meet with certain local governing bodies and consider this[give consideration to—their] concerns of those bodies before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by a local governing body requesting the consideration. This administrative regulation establishes requirements for the extended weight coal or coal by-products haul road system and associated bridge weight limits.

Section 1. Definitions. (1) "AASHTO" means the American Association of State Highway and Transportation Officials.
(2) "Catastrophic failure" means a failure that is marked by sudden or unpredictable extreme damage [ranging from extreme malfunctions-to-total ruin].
(3) "CO" means county.
(4) "Coal by-product[by-products] means fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, or coal cinders.
(5) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.
(6) "FROM" means the beginning milepost and terminus of a road segment on the extended weight coal or coal by-product haul road system.
(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.
(8) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.
(9) "LN" means line.
(10) "Local governing body" means the fiscal court of a county, the city council or commission of a city of the first through fourth classes, or the council of an urban county government.
(11) "P" means parallel bridge.
(12) "PKWY" means parkway.
(13) "TO" means the ending milepost and terminus of a road segment on the extended weight coal or coal by-product haul road system.
(14) "TY I" means a single unit truck consisting of two (2) single axles.
(15) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.
(16) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tandem arrangement.
(17) "TY IV" means a tractor-semitrailor combination with five (5) or more axles.
(18) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

Section 2. Evaluation of Bridges (1) The department shall determine which bridges on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure by a vehicle operating at the weight authorized by KRS 177.9771 by using The Manual for Bridge Evaluation[the Manual for Condition Evaluation of Bridges, 1994 edition with revisions through 2000].
(2) The load factor method of analysis shall be used if a bridge is known to have been designed by this method.
(3) If the allowable stress method of analysis is used, the maximum allowable stress in steel members shall not exceed seventy-five [sixty-nine (69)] percent of the yield strength of the steel.
(4) If neither the load factor nor[the] allowable stress method of analysis can be used, the Department of Highways shall conduct an on-site inspection to determine if the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. Limiting Weight on Bridges. The department shall use the guidelines in The Manual for Bridge Evaluation[the Manual for Condition Evaluation of Bridges] to set a weight limit for a bridge deemed at risk of catastrophic failure pursuant to KRS 189.230(2).

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. A motor vehicle displaying a valid extended weight coal or coal by-products haul road license issued pursuant to KRS 177.9771 and being operated on a road segment that is part of the Extended Weight Coal or Coal By-product Haul Road System (EWHRS) shall not exceed the dimension limits established in 603 KAR 5:070, Sections 3 and 4.

Section 5. The Extended Weight Coal and Coal By-product Highway System and Limited Bridges (1)(a) The EWHRS shall be:
1. Updated annually by official order of the secretary and amended as necessary by official order; and
(b) The cabinet shall provide a copy of the list in paper form upon request.
(c) A paper copy[copy][copies] may be viewed at any[any of the] Department of Highways district office[offices] or may [may] be viewed, copied, or purchased for ten (10) cents per page from the Division of Maintenance(Operations), Third Floor, Transportation Cabinet Building, 200 Main Street(Seventh Floor, 601 High Street), Frankfort, Kentucky 40622. The telephone number for the Division of Maintenance(Operations) is (502) 564-4556, and the hours of operation are 8 a.m. until 4:30 p.m., Eastern Time, Monday through Friday.
(2) The bridges identified on the Transportation Cabinet Web
site[website] and by official order of the secretary shall:
(a) Be those bridges that have been determined by the department to be at risk of damage or destruction to the point of catastrophic failure; and
(b) Have a weight limit established and a weight limit has been established.

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, a vehicle on a bridge listed on the Web site[website] and in the official order if the vehicle's gross weight exceeds the weight limit established for that bridge.

Section 7. Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge included on the EWCHR.

Section 8. Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, a vehicle on a bridge on the extended weight coal or coal by-products haul road system if the vehicle's gross weight exceeds the weight limit established for that bridge.

Section 9. (1) A resolution of a local governing body making a recommendation to the secretary, pursuant to KRS 177.977(2), shall be submitted to Secretary of Transportation, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622.
(2) The resolution shall set forth:
(a) A specific description of the road or road segment under consideration; and
(b) A specific description of the inherent and definite hazardous condition or the factors[which] may create a special condition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, Division of Maintenance/Operations, Third Floor, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. until 4:30 p.m., eastern time.

MIKE HANCOCK, P.E., State Highway Engineer
JOE PRATHER, Secretary
APPROVED BY AGENCY: July 9, 2009
FILED WITH RIC: July 10, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2009 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify the agency in writing five working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be 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. Transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5236.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides guidance for accessing the current official order setting forth the extended weight coal or coal by-product road system.
(b) The necessity of this administrative regulation: KRS 177.977(2) requires the Secretary of Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.977(1) requires that roads which are currently or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system.
KRS 189.230 provides that the Department of Highways may prescribe a vehicle weight limit for a bridge lower than a limit prescribed in KRS 177.977(1) on a bridge which may be damaged or destroyed by the point of catastrophic failure if gross vehicle weights exceed certain limits.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation describes how to obtain the current list of roads designated as part of the extended weight coal or coal by-products haul road system. Further, this regulation establishes procedures for local governing bodies seeking consideration of addition or deletion of particular roads from the extended weight coal or coal by-products haul road system.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide updated information to the public allowing for a more effective administration of the statutes.
(2) If this is an amendment to an existing administrative regulations, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended regulation updates the Transportation Cabinet address and website related to the Extended Weight Coal or Coal by-Products Haul Road System. It also updates the manual related to bridge inspection to a 2008 edition which contains more of the latest design theory concerning load and resistance factor rating.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the public with up to date and current information.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 177.9771 authorizes the Secretary of the Transportation Cabinet to establish the official order. This amendment merely provides guidance for accessing the current official order.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the current information related to the location of the Transportation Cabinet, Web site information, and an updated version of the bridge inspection form.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all motorists traveling on state-maintained highways as the official order established pursuant to KRS 177.977 sets the extended weight coal or coal by-products haul road system and associated bridge weight limits for all highways. It will directly benefit all those who travel state-maintained highways as it will provide better access to the most current official order.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative-
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, services, 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 Transportation Cabinet will continue to inspect and monitor roads and bridges on the extended weight coal haul road system.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.9771, 189.230, 177.9772, 177.979
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of expenditures will relate to the repair of roads and bridges on the extended weight coal by-products haul road system.
(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.
(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.
(c) How much will it cost to administer this program for the first year? Costs are unknown as they are subject to the inspection and determination of the need for road and bridge repairs.
(d) How much will it cost to administer this program for subsequent years? Unknown, see (c).
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 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 150.030, 150.060, 150.070, 150.100, 150.240, 150.010, 150.030, 150.035, 150.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 150.060, 150.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 158.030 establish the age for compulsory school attendance. KRS 158.060 defines the school day and month and make-up of school days missed. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. [(4) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:
(a) Establish the opening and closing dates of the school term;
(b) Establish beginning- and ending-dates of each school month;
(c) State the number of days of instruction;
(d) Establish the minimum length of the instructional day;
(e) State the instructional time the local board of education requires for kindergarten- if in excess of the minimum-three (3) hours of instruction;
(f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and
(g) Designate days on which schools shall be closed;]

(2) Opening day for planning activities without the presence of pupils shall be scheduled to occur prior to the first instructional day of the school term.
(3) Closing day for planning activities without the presence of pupils shall be scheduled to occur following the completion of the last instructional day of the school term.
(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergencies. In addition to the minimum 1,650 hours of instructional time, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.
(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.
(6) An-up-to-date master (Bell) schedule for each school in a district shall be on file in the district's central office.

Section 2. [(1) The local board of education shall file each adopted school calendar with the Department of Education no later than June 30 of each year. The local school district shall not be paid any installment of its SEEK-program allotment until the school calendar has been approved by the Department of Education.]
(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.
(3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. [(4) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education.

- 466 -
(3) The local school district shall be allowed a total of five (5) hours of excused school days per school year that do not have to be made up, and that are due to an emergency. These hours shall be reported to the Department on the amended school calendar.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:
   (a) The pupil is a participant in a cocurricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;
   (b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;
   (c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3.305, Section 4(3);
   (d) The pupil's mental or physical condition prevents or renders inavoidable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;
   (e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days; or
   (f) The student has an individual education plan (IEP) that requires less than full-time instructional services.

Section 5. A local board of education may request disaster days of one (1)-school, or part of the district, to be excused school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany the request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school day:
   (a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12," pursuant to 704 KAR 3.303;
   (b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3.305;
   (c) Co-curricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and
   (d) A maximum of five (5) minutes passage-time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational-schools, day-treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absences from classroom instruction.

(2) The local board of education shall adopt a policy specifying co-curricular instructional activities which may or may not be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and non-instructional time periods for all grade levels served and schedules provided.

Section 7. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed) and other information required by the local board of education. For elementary students who are signed out, the student entry and exit log shall also include a signature of:
   (a) A parent;
   (b) A legal guardian; or
   (c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) A full day of attendance shall be recorded for a pupil who is in attendance more than 80 percent of the regularly-scheduled school day for the pupil's grade level.

(5) The percentages described in this subsection shall apply to the regularly-scheduled school day only, and shall be applicable to entry level through grade level twelve (12).
2. A tardy shall be recorded for a pupil who is absent less
than 35 percent of the regularly-scheduled school day for
the pupil's grade level.
3. A half day absence shall be recorded for a pupil who is
absent 35 percent to 84 percent of the regularly-scheduled
school day for the pupil's grade level.
4. A full day absence shall be recorded for a pupil who is
absent more than 84 percent of the regularly-scheduled school
day for the pupil's grade level.

Section 4[44] A local board of education may permit an
arrangement whereby a pupil has a shortened school day in accor-
dance with KRS 158.660, or local board of education policy. The
time a student is in attendance shall be included in calculating the
district's average daily attendance.

Section 5[45] A local board of education may permit an
arrangement in which a pupil pursues part of the student's education
under the direction and control of one (1) public school and part of
the student's education under the direction and control of another
public or nonpublic school. The time a student is served by public
school shall be included when calculating the district's average
daily attendance.

Section 6[46] If a local school district, under the provisions of
KRS 157.360(6), enrolls a child with a disability in a private school
or agency, the private school or agency shall certify the attendance
of the child to the local school district at the close of each school
month.

Section 7[47] (1) If a local school district enrolls a pupil in the
entry level program who will not be five (5) years of age on or
before October 1 of the year of enrollment, the total aggregate days
attendance for the pupil shall not be included in calculating the
district's average daily attendance.
(2) If a local school district enrolls a pupil in the second level of
the primary program who will not be six (6) years of age on or
before October 1 of the year of enrollment, the total aggregate days
attendance for the pupil shall not be included in calculating the
district's average daily attendance except under the following con-
ditions:
(a) The local board of education shall have determined that
the student is eligible for enrollment into the second level of the prima-
ry program after academic, social, and developmental progress
records from multiple data sources are reviewed by a team and
determined to support accelerated placement. These sources shall include:
1. Anecdotal records;
2. A variety of student work samples, including evidence of
student self-reflection; and
3. Standardized test results,
(b) The team shall be comprised of three (3) members who have
knowledge of the student's developmental skills and abilities.
Team members shall be chosen from these categories:
1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists;
(c) At least one (1) team member shall represent the district
office and have an understanding of the student's learning
developmental and knowledge of developmentally-appropriate practices; and
(d) If a student is recommended by the local board of educa-
tion for accelerated placement into the second level of the primary
program, the district shall forward that recommendation to the de-
partment for approval with:
1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.
(3) A local school district shall enroll any resident pupil, not
holding a high school diploma, under the age of twenty-one (21)
years of age who wishes to enroll. The days attended after the
student's 21st birthday shall not be included in the calculation of
the district's average daily attendance.

Section 8[48] The Growth Factor Report for the first two (2)
months of the school year pursuant to KRS 157.360(8) shall
be submitted to the Department of Education within ten (10) busi-
ness days following the last day of the second school month or by
November 1 of each year, whichever occurs first.

Section 9[49] (1) A copy of the written agreement local boards
of education execute for enrollment of nonresident pupils as pro-
vided by KRS 157.350(4) shall be submitted to the Department of
Education no later than February 1 of the year prior to the school
year to which it will apply. The written agreement shall include the
specific terms to which the districts have agreed. A list of the
names of all nonresident pupils enrolled in the district covered by
the agreement shall be submitted to the Department of Education
no later than November 1 of the school year covered by the
agreement.
(2) A change may be made to the original nonresident pupil
agreement up to the close of the school year to include the nonre-
resident pupil enrolling after the close of the second school month.
The amendment shall be submitted to the Department of Education
no later than June 30 of each year.

Section 10[50] The superintendent's annual attendance report
(SAAR) shall be considered the request to substitute prior year's
average daily attendance for up to ten (10) designated weather-
related low attendance days, and certification that the low atten-
dance was due to inclement weather in accordance with KRS
157.320(17). Documentation that the low attendance was due to
inclement weather shall be retained at the central office.

Section 11[51] (1) The school's records of daily attendance
and teacher's monthly attendance reports, daily and class period
absentee lists, student entry and exit logs, and the Home/Hospital
Program Form, shall be the original source of attendance data for
all pupils enrolled in the public common schools and shall be veri-
fied at the end of each school month.
(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated cer-
tified person within the elementary or secondary school who shall be
responsible for verifying and certifying the state attendance docu-
ments for accuracy.
(3) The school's records of daily attendance and tenth month
teachers' monthly attendance reports shall be retained at least
twenty (20) years. The daily and class period absentee lists, and
student entry and exit logs shall be retained at least two (2) full
school years after the current school year.

Section 12[52] The following entry, reentry and withdrawal
codes shall be used to indicate the enrollment status of pupils:
(1) E01 - A pupil enrolled for the first time during the current
year in either a public or nonpublic school in the United States;
(2) E02 - A pupil previously enrolled during the current school
year in either a public or nonpublic school in another state who has
not previously enrolled in Kentucky during the current school year;
(3) E03 - A pupil enrolling for the first time during the current
school year in either a public or nonpublic school, who withdrew as
a W06, W07, W13, W16 or W18 during the 2004-2005 school year
or as a W24 or W25 for previous school years;
(4) R01 - A pupil received from another grade (elementary, or
in the same school;
(5) R02 - A pupil received from another public school in the
same public school district;
(6) R06 - A pupil reentering the school after dropping out, dis-
charge or expulsion from a school district in Kentucky during the
current school year, who has not entered any other school during the
intervening period;
(7) R07 - A pupil transferred in from another state;
(8) R21 - A pupil previously enrolled in a home school in Ken-
ucky during the current school year;
(9) W01 - A pupil transferred to another grade (elementary, or
in the same school;
VOLUME 36, NUMBER 2 — AUGUST 1, 2009

the same school. The reentry code to use with W01 shall be R01;
(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, or if the student has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R00;
(12) W08 - A pupil withdrawn due to death;
(13) [W09—A pupil who has graduated or completed a 604 plan or an individual education plan prior to the end of the school term or year— (14)] W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R00. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
(14)[[16] W17 - An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with KAR 5:060;
(15)[[16] W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R02;
(16)[[17] W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;
(17)[[18] W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;
(18)[[19] W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;
(19)[[20] W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;
(20)[[21] W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school;
(21)[[22] W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate (and);
(22)[[23] W27 - A pupil who has withdrawn from school and subsequently received a GED;
(23)[[24] W28 - A pupil who has reached the maximum age for education services without receiving a diploma or certificate of attainment;
(24)[[25] C01 - a pupil who completes the school year in the school of the most current enrollment;
(25)[[26] G01 - a pupil who graduates in less than four (4) years;
(26)[[27] G02 - a pupil who graduates in four (4) years;
(27)[[28] G03 - a pupil who graduates in five (5) or more years;
(28)[[29] G04 - a pupil who graduates in six (6) or more years, and;
(29)[[30] NS - a pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13.[[14] (1) For a student who has been suspended, a code of S shall be used to indicate the days suspended.
(2) Suspension shall be considered an unexcused absence.

Section 14. The ethnicity of each student shall be designated as either Hispanic/Latino or not Hispanic/Latino.

Section 15. One or more of the following racial/ethnic codes shall be used to indicate the racial category/ethnic origin of pupils:
(1) 1 - White [not-Hispanic] - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;
(2) 2 - Black [not-Hispanic] - A person having origins in any of the black racial groups of Africa;
(3) [2 - Hispanic] - A person of Mexican, Puerto Rican, Cuban, Central- or South American- or other Spanish culture or origin regardless of race;
(4) 4 - Asian [or Pacific Islander] - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
(4)[(6)] 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and
(5) 7 - Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16.[[19] (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Dropout data shall be reported to the Department of Education on the non academic data report that is submitted to the Department each year [information obtained from the survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report no later than June 30 of each year];
(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student’s permanent file.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “Growth Factor Report”, June 2004;
(b) “Superintendent's Annual Attendance Report”, June 2004;
and
c) “Student Dropout Questionnaire”, December 2002;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 16th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEVIN N. NOLAND, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: June 15, 2009
FILED WITH LRC: June 17, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 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 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 July 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 administra-
tive regulation allows the Kentucky Department of Education to administer attendance calculations for Kentucky's local school districts. The regulation also defines entry and withdrawal codes. In addition, the demographic data captured at the time of enrollment includes the race of the student.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 157.320, 158.060 and 158.070 that set forth the Kentucky Board of Education's responsibility to establish attendance regulations used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific school attendance requirements in KRS 156.070, 156.160, 157.320, 158.060 and 158.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific attendance requirements to be calculated in local school districts per KRS 156.070, 156.160, 157.320, 158.060 and 158.070.

(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 changes reflect more current terminology and clarify definitions that have resulted in misunderstanding of current regulation including clarification of Daily Attendance, Enrollment Codes, and Ethnicity and Race Codes. Ethnicity and Race codes will change to require identification per the Federal Guidelines. Incorporation of graduation codes will streamline the calculation of early graduation rates, which is a required component of NCLB reporting.

(b) The necessity of the amendment to this administrative regulation: Revising 702 KAR 7:125 should result in clearer guidance to local districts in the area of attendance reporting. Superintendents have requested the change in the daily attendance calculation to streamline the attendance reporting process at the local district level. This should support our efforts to reach proficiency by 2014 by making this process less time consuming and reducing errors.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes with updated guidance as a means to improve data quality for federal and state reporting purposes and streamline the reporting process at the local school district level.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific attendance requirements throughout the state.

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education. This change could increase local districts average daily attendance (ADA) calculation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will update the regulation to assist with the reporting process at the local district level, and comply with new federal reporting requirements.

(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. School districts will abide by the requirements set forth. Kentucky Department of Education staff will continue to review data submitted by school districts and report as required to state and federal agencies.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have the requested guidance to streamline and support the attendance process at the local district level. The Department of Education will have information required for state and federal reporting purposes.

(5) 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 aggregate costs.

(b) On a continuing basis: The proposed amendment does not result in additional aggregate costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary as the SEEK funding formula remains contingent upon current appropriated amounts.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and the Kentucky Department of Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 157.320, 158.060 and 158.070.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 change could increase individual local districts' average daily attendance (ADA) calculation, thus increasing SEEK payments to districts, however, any increases will still remain subject to the aggregate SEEK appropriation, but a possible net increase in local district 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 change could increase individual local districts' average daily attendance (ADA) calculation, thus increasing SEEK payments to districts, however, any increases will still remain subject to the aggregate SEEK appropriation, thus no change in aggregate state expenditures, but a possible net increase in local district revenue.

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost to administer or implement.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost to administer or implement.

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:

- 470 -
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

PUBLIC PROTECTION CABINET
Department of Insurance
Property & Casualty Insurance Division
(Amendment)

806 KAR 10:030. Reporting requirement for broker’s statement and surplus lines tax.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-170, 304.10-180
STATUTORY AUTHORITY: KRS 304.2-110, 304.10-170, 304.10-210, EO 2002-535
NECESSITY, FUNCTION, AND CONFORMITY: EO 2002-535, signed June 12, 2002, created the Department of Insurance, headed by the Commissioner of Insurance, KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the executive director to prescribe the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 304.10-210 requires the executive director to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

Section 1. Definitions. (1) *Alien insurer* is defined in KRS 304.1-070(3).
(2) *Broker* or *surplus lines broker* is defined in KRS 304.10-030(1).
(3) *Commissioner* means the Commissioner of the Department of Insurance.
(4) *Department* means the Department of Insurance.
(5) *Export* is defined in KRS 304.10-030(2).
(6) *Foreign insurer* is defined in KRS 304.1-070(2).
(7) *Premium charged* means the premium billed and collected during the preceding calendar quarter.

Section 2. [Annual-Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions Effective Prior to July 1, 2002. (1) Transactions effective between the period January 1, 2002 and July 1, 2002 shall be reported on the Surplus Lines Broker Annual Statement Kentucky S.L.A.S. Form 1 & 1A (Rev. 4/01).
(2) Surplus lines premium tax, computed at the rate of three percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the Surplus Lines Broker Annual Statement, shall be payable to the Kentucky State Treasurer, and shall be remitted to the Kentucky Office of Insurance.
(3) The Surplus Lines Broker Annual Statement shall be completed and submitted with the tax by all licensed brokers before April 1, 2003, even if no insurance transactions were made during the period.

Section 3. Quarterly Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions [Effective On and After July 1, 2002]. (1) The department shall generate a quarterly report of all surplus lines transactions for a preceding calendar quarter, for each surplus lines broker based on the affidavit filed in accordance with 806 KAR 10:030 (Transactions effective on and after July 1, 2002 shall be reported on the Surplus Lines Broker Quarterly Report (Ky S.L.O.R. Form 2 & 2A (Ed. 4/02))).
(2) The department shall make the quarterly report available to a licensed surplus lines broker on its secure Web site, https://insurance.ky.gov/kentucky/secure/Services/default.aspx, at least sixty (60) days following the end of each calendar quarter.
(3) Each licensed surplus lines broker shall:
(a) Retrieve his or her quarterly report from the department’s secure Web site, http://insurance.ky.gov/kentucky/secure/Services/default.aspx; and
(b) Remit a signed copy of the quarterly report, along with the surplus lines premium tax and any applicable penalties in accordance with KRS 304.99-085, within thirty (30) days of the end of each calendar quarter.
(4) Surplus lines premium tax shall be:
(a) Computed at the rate of three (3) percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the quarterly report;
(b) Surplus Lines Broker Quarterly Report, shall be Payable to the Kentucky State Treasurer; and
(c) Surplus Lines Broker Quarterly Report, shall be Payable to the Kentucky Department Office of Insurance, along with the quarterly report.
(5) The quarterly report shall be completed and submitted quarterly by all licensed brokers even if no insurance transactions were completed during the period.

Section 4. Effective Date. The administrative regulation shall be effective beginning with the quarterly report due July 1, 2010 [Incorporation by Reference: (1) The following material is incorporated by reference:
(a) Form Kentucky S.L.A.S. Form 1 & 1A (Rev. 4/02).
(d) Surplus Lines Broker Annual Statement, April 2002 edition*, Office of Insurance.
(e) Form Kentucky S.L.A.S. Form 1 & 1A (Rev. 4/02).
(n) The material may also be obtained on the office’s Internet Web site, http://fdic.ppr.ky.gov/kentucky/]

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2009
FILED WITH LRC: July 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2009, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0688, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the enforcement of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the executive director to prescribe the form of the verified statement of all surplus lines transactions for the preceding calendar quarter. KRS 340.10-210 requires the executive director to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the process for surplus lines brokers to report and pay the required taxes on surplus lines business on a quarterly basis to the department of Insurance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments to this existing administrative regulation will require the department to generate a unique quarterly report for each licensed surplus lines broker based on affidavits filed with the department. Each surplus lines broker will be required to electronically retrieve their unique quarterly report, review and sign the report, and submit it to the department along with the appropriate surplus lines tax.
(b) The necessity of the amendment to this administrative regulation: The amendments to this existing administrative regulation are necessary to update and streamline the existing quarterly statements for surplus lines brokers and to streamline the workload of the department staff.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the enforcement of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the executive director to prescribe the form of the verified statement of all surplus lines transactions for the preceding calendar quarter. KRS 340.10-210 requires the executive director to promulgate administrative regulations to effectuate the surplus lines law. The amendments to this existing administrative regulation update the manner and form for surplus lines brokers to provide quarterly statements in accordance with KRS 304.10-170 and 304.10-180.
(d) How the amendment will assist in the effective administration of the statutes: The amendments to this existing administrative regulation prescribe the information to be submitted by a surplus lines broker of all surplus lines insurance transacted in the previous calendar quarter. This new electronic format will streamline the process for both surplus lines brokers and department staff.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,147 surplus lines brokers licensed in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to follow the updated process when submitting quarterly statements and payment of taxes in accordance with KRS 304.10-170 and 304.10-180 beginning July 1, 2010.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) As this process will be automated through a Web based service, and as the department will be generating the quarterly reports for each surplus lines broker, there should not be any significant costs for surplus lines brokers to comply.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be in compliance with KRS 304.10-170 and 304.10-180. Additionally, quarterly reports should be submitted accurately with the initial submission, thereby eliminating the need to submit amended reports.

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: The cost will be minimal.
(b) On a continuing basis: There should be no additional cost on a continuing basis.
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all surplus lines brokers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirement of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.10-170, 304.10-210
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.
(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.
(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

PUBLIC PROTECTION CABINET
Department of Insurance
Property and Casualty Insurance Division
(Amendment)

806 KAR 10:050. Surplus lines affidavits.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-040, 304.10-050, 304.10-070, 304.10-160

STATUTORY AUTHORITY: KRS 304.2-110, 304.10-050, 304.10-210, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance [EO 2004-731, signed July 9, 2004, created the Department of Insurance.] KRS 304.2-110 authorizes the executive director[commissioner of insurance] to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-030(1) requires the executive director[commissioner of insurance] to promulgate administrative regulations prescribing the affidavit form and the manner and form of filing the surplus lines broker affidavit of eligibility for export. KRS 304.10-210 requires the executive director[commissioner of insurance] to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation established the manner and form for surplus line brokers to furnish to the Department[Office] of Insurance evidence of eligibility for export required by KRS 304.10-050.

Section 1. Definitions. (1) "Alien insurer" is defined in KRS 304.1-070(5).
(2) "Broker" or "surplus lines broker" is defined in KRS 304.10-030(1).
(3) "Department" means the Department of Insurance.
(4) "Export" is defined in KRS 304.10-030(2).
(5) "Foreign insurer" is defined in KRS 304.1-070(2).

Section 2. Time Period for Filing. An affidavit of eligibility for export shall be filed by the licensed surplus line broker with the Department[Office] of Insurance within sixty (60) days after the effective date of each premium bearing surplus lines transaction with a foreign insurer. The affidavit shall be filed within ninety (90) days after the effective date of each premium bearing surplus lines transaction with an alien insurer.

Section 3. Method[2-Methods] of Filing. (1) A surplus lines affidavit[Affidavit] shall be filed [by mail or electronically] electronically through:
(a) The Department of Insurance Website, https://insurance.ky.gov/kentucky/secure/Services/default.aspx;

(3) The broker shall maintain records of each transaction, including evidence of efforts to place insurance with insurers authorized to transact and actually writing insurance in this state, which shall be subject to examination by the Department[Office] of Insurance pursuant to KRS 304.10-160 [(4)] and the Department[Office] of Insurance shall be entitled to examine any records. No affidavit shall be accepted by the department and shall be returned for correction and resubmission within the timeframes established in Section 1 of this administrative regulation.

Section 4. Effective Date. This administrative regulation shall apply to affidavits submitted on and after July 1, 2010. All references to the "Surplus Lines Affidavit, Kentucky S.L. Form 1 (Rev. 06/04)") are incorporated by reference.
(2) This rule may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Office of Insurance Internet website at http://dol.oss.ky.gov/kentucky/.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2009
FILED WITH LRC: July 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this rule shall be held on August 24, 2009, at 9 a.m., ET at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by August 17, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written notice for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0886, fax (502) 564-1435.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson
(1) Provide a brief summary of:
(a) This administrative regulation does: This administrative regulation establishes the manner and form for surplus lines brokers to furnish to the Department of Insurance evidence of eligibility for export required by KRS 304.10-050.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the information to be submitted by a surplus lines broker to determine whether the insurance procured was eligible for export.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.10-050 requires the Executive Director of the Office of Insurance to promulgate administrative regulations prescribing the affidavit form and the manner and form of filing the surplus lines broker affidavit of eligibility for export. KRS 304.10-210 requires the Executive Director of the Office of Insurance to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation establishes the manner and form for surplus lines brokers to furnish to the Department of Insurance evidence of eligibility for export required by KRS 304.10-050.
(d) How this administrative regulation currently assists or will...
assist in the effective administration of the statutes: This administrative regulation prescribes the information to be submitted by a surplus lines broker to determine whether the insurance procured was eligible for export and the format in which surplus lines brokers are required to provide the 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: The amendments to this existing administrative regulation will allow for updates to the form of the affidavit, agency names and the department's Web site address.
(b) The necessity of the amendment to this administrative regulation: The amendments to this existing administrative regulation are necessary to update and streamline the existing process for filing surplus lines affidavits.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.10-050 requires the Executive Director of the Office of Insurance to promulgate administrative regulations prescribing the affidavit form and the manner and form of filing the surplus lines broker affidavit of eligibility for export. KRS 304.10-210 requires the Executive Director of the Office of Insurance to promulgate administrative regulations to effectuate the surplus lines law. The amendments to this existing administrative regulation update the manner and form for surplus lines brokers to furnish to the Department of Insurance evidence of eligibility for export required by KRS 304.10-050.
(d) How the amendment will assist in the effective administration of the statutes: The amendments to this existing administrative regulation prescribes the information to be submitted by a surplus lines broker to determine whether the insurance procured was eligible for export and the format in which surplus lines brokers are required to provide the information.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,147 surplus lines brokers licensed in Kentucky.
(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: Regulated entities will be required to follow the updated process when submitting surplus lines affidavits in accordance with KRS 304.10-050.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As this administrative regulation is eliminating the hard copy submission of surplus lines affidavits and, in turn, reducing administrative costs, the cost of compliance for entities should be reduced.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be in compliance with KRS 304.10-050.
(g) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: The cost will be minimal.
(b) On a continuing basis: There should be no additional cost on a continuing basis.
(h) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.
(i) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.
(j) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.
(a) "Eligible Individual" is defined in KRS 304.17A-005(11).
(b) "Enrollee" is defined in KRS 304.17B-001(9).
(c) "Future effective date" means a date no earlier than the first day of the month following the month of application and no later than a date three (3) months after the month of application.
(d) "Government" means any political unit, including local, city, county, state, and federal authority.
(e) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17B-001(11).
(f) "Guaranteed Acceptance Program qualified individual" is defined in KRS 304.17A-005(20).
(g) "Insurer" is defined in KRS 304.17A-005(27).
(h) "Kentucky Access" is defined in KRS 304.17B-001(7).
(i) "Month of application" means:
(a) The month in which the date of receipt is logged by the third-party administrator for the application; or
(b) The month of the postmark date, if the application has a postmark date, before the last three (3) days of the month prior to its receipt.
(j) "Substantially similar coverage" means individual coverage that:
(a) Meets the definition of a health care plan as defined in KRS 304.17A-005(22);
(b) Includes a deductible that is the same as or higher than the deductible in the policy for which the applicant is applying; and
(c) Does not include benefits that are more restrictive than the policy for which the applicant is applying.
(k) "Office" is defined in KRS 304.1-050(2).
(l) "Third-party administrator" means the administrator selected by the department of health and family services pursuant to KRS 304.17B-011(1) to administer Kentucky Access.

Section 2. Application Process [Applicant Eligibility Requirements] (1) An individual applying for Kentucky Access shall submit to the third-party administrator:
(a) A completed:
1. Application form HIPMC-KA-1;
2. Section III of application form HIPMC-KA-1 if the individual is applying for dependent coverage at the time the initial application for coverage is submitted; and
3. Application form HIPMC-KA-2 if the individual is applying for dependent coverage after the enrollee is enrolled in Kentucky Access;
(b) Documentation as required by Section 4 of this administrative regulation and
(c) Premium payment for at least two (2) months.
(d) Application processing for a paper application shall be performed as follows:
(a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process the application in order of receipt.
(b) If the premium required by subsection 1(c) of this section is not received within three (3) business days of postmarked date from the date the application is electronically submitted or faxed, the third-party administrator shall:
1. Not consider the application;
2. Return the application to the applicant; and
3. Initiate the process for refund of premium, if necessary.
(c) If the premium required by subsection 1(c) of this section is received after the application, the third-party administrator shall review the application to determine if:
1. All sections of the application are completed, if necessary; and
2. All documentation required by Section 4 of this administrative regulation has been submitted.
(d) If an application is complete pursuant to subsection 2(c) of this section, the third-party administrator shall:
1. Verify that the premium is from a permitted source in accordance with Section 5(1)(b); and
2. Verify that the check for payment of the premium is paid by the applicant's bank;
3. Waiting fifteen (15) business days; or
4. Receiving documentation from the bank that the check has cleared; and
5. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.
(e) If an application is not complete, the third-party administrator shall:
1. Reject the application; and
2. Notify the applicant in writing within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:
(a) Identify the missing information needed to complete the application; and
(b) Give the applicant thirty (30) days to provide the information.
(f) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:
1. Verify that the premium is from a permitted source in accordance with Section 5(1)(b); and
2. Verify that the check for payment of the premium is paid by the applicant's bank.
3. Waiting fifteen (15) business days; or
4. Receiving documentation from the bank that the check has cleared; and
5. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.
6. If an application is not complete, the third-party administrator shall:
(a) Reject the application; and
(b) Notify the applicant in writing within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:
(a) Identify the missing information needed to complete the application; and
(b) Give the applicant thirty (30) days to provide the information.
(c) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:
1. Verify that the premium is from a permitted source in accordance with Section 5(1)(b); and
2. Verify that the check for payment of the premium is paid by the applicant's bank.
3. Waiting fifteen (15) business days; or
4. Receiving documentation from the bank that the check has cleared; and
5. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.
6. If an application is not complete, the third-party administrator shall:
(a) Reject the application; and
(b) Notify the applicant in writing within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:
(a) Identify the missing information needed to complete the application; and
(b) Give the applicant thirty (30) days to provide the information.
(c) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:
1. Verify that the premium is from a permitted source in accordance with Section 5(1)(b); and
2. Verify that the check for payment of the premium is paid by the applicant's bank.
3. Waiting fifteen (15) business days; or
4. Receiving documentation from the bank that the check has cleared; and
5. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.
6. If an application is not complete, the third-party administrator shall:
(a) Reject the application; and
(b) Notify the applicant in writing within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:
(a) Identify the missing information needed to complete the application; and
(b) Give the applicant thirty (30) days to provide the information.
days of receipt of the Information:

1. Venti that the premium is from a permitted source in accordance with Section 51(b); and
2. Venti that the check for payment of the premium is paid by the applicant's bank:

(a) Waiting fifteen (15) business days; or

(b) Receiving documentation from the bank that the check has cleared.

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(a) If an applicant fails to provide the information within thirty (30) days, the third-party administrator shall determine the applicant ineligible and send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:

(1) The reason for ineligibility; and

(2) The right to appeal the determination in accordance with Section 7 of this administrative regulation.

(b) A determination of ineligibility in accordance with subsection (a) or subsection (b) of this section shall not preclude the applicant from filing a new application for Kentucky Access.

(c) Upon a determination of eligibility, the third-party administrator shall send to the applicant within five (5) business days:

(1) An Identification card; and

(2) A health benefit plan coverage document.

(d) Upon a determination of ineligibility, the third-party administrator shall send to the applicant, within three (3) business days of the determination, a letter notification of:

(1) The reason for the determination of ineligibility; and

(2) The right to appeal the determination in accordance with Section 7 of this administrative regulation, meet the following eligibility requirements:

(a) The applicant shall be an eligible individual in accordance with KRS 304.17B 016(1); or

(b) The applicant shall be eligible as a GAP-qualified individual pursuant to KRS 304.17B 016(4)(e); or

(c) The applicant shall be determined eligible for coverage pursuant to KRS 304.17B 016(2).

(2) Proof of eligibility for Kentucky Access shall be submitted to the third-party administrator when the application is submitted:

(a) An eligible individual who is qualifying pursuant to KRS 304.17B 016(1) shall submit documentation of all least eighteen (18) months of prior countable, creditable coverage provided by one (1) or more previous insurers or employers and documentation that the most recent coverage was group, governmental, or church plan coverage.

(b) An individual who is qualifying pursuant to KRS 304.17B 016(2) shall submit one (1) of the following:

(1) A copy of a notice of premium rate for individual health care coverage offered by an insurer that exceeds the Kentucky Access premium rate for substantially similar coverage dated within the ninety (90) day period immediately preceding the effective date for Kentucky Access.

(2) Documentation from a physician dated within one (1) year preceding the effective date of Kentucky Access coverage stating the diagnosis of a high-cost condition as listed in KRS 304.17B 004(1).

(c) An individual who is qualifying as a GAP-qualified individual pursuant to KRS 304.17B 016(4)(a) shall submit documentation from the GAP participating insurer identifying the applicant as a GAP-qualified individual.

(d) An individual applying as a dependant pursuant to KRS 304.17B 016(4)(a) or Section 3 of the administrative regulation shall submit the documentation required by Section 5 of the administrative regulation.

(e) Proof of current Kentucky residency, required for eligible individuals applying pursuant to KRS 304.17B 016(1), shall be established by submitting documentation to the third-party administrator when the application is submitted, which may include a copy of:

(a) A valid Kentucky driver's license;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence;

(c) A resident Kentucky income-tax return for the most recent twelve (12) month tax period, or

(d) A receipt-in-the-applicant's-name-for-dwelling-expenses in Kentucky, which shall be dated within the most recent three (3) months before the date of application for Kentucky Access. This receipt may be for one (1) of the following payments:

(a) Mortgage;

(b) Rent; or

(c) Utility bill.

(4) Proof-of-twelve-(12)-month Kentucky residency, required for individuals applying pursuant to KRS 304.17B 016(2), shall be established by submitting documentation to the third-party administrator when the application is submitted, which may include a copy of:

(a) A valid driver's license, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(c) A resident Kentucky income-tax return for the most recent twelve (12) month tax period, or

(d) Two (2) receipts-in-the-applicant's-name-for-dwelling-expenses in Kentucky.

(5) An individual who is eligible for coverage under Kentucky Access pursuant to KRS 304.17B 016(3) or (4) shall be subject to a preexisting condition exclusion for any mental or physical condition for which mental or physical treatment was recommended or received within the last six (6) month period ending on the individual's enrollment date:

(a) The exclusion period shall not exceed a period of twelve (12) months following the enrollment date; and

(b) The exclusion shall not apply to:

1. Genetic information described as a condition in the absence of a diagnosis;

2. Domestic violence;

3. Newborn children if added to Kentucky Access within thirty (30) days of the date of birth; and

4. Adopted children if added to Kentucky Access on the date the child was legally placed for adoption or the date the child was legally adopted.

(6) An individual who is eligible pursuant to KRS 304.17B 016(2) or (4)(a) may submit documentation of countable, creditable coverage, if any, to reduce the preexisting condition exclusion time period as established in subsection (4) of this section by the number of months of his countable, creditable coverage.

(7) An individual who is terminated or was terminated from Kentucky Access coverage within the past twelve (12) months, may reestablish eligibility, as permitted by KRS 304.17B 016(4)(b), by submitting documentary proof of a good faith reason for the termination, including:

(a) Loss of employment;

(b) Moving out of state and returning;

(c) Change in family status.

(8) An individual who is eligible for COBRA continuation coverage or state continuation coverage pursuant to KRS 304.18-110 shall not be eligible for Kentucky Access until:

(a) The election time period for COBRA or state continuation of coverage has expired;

(b) Coverage under COBRA or state continuation is exhausted; or

(c) Coverage under COBRA or state continuation becomes unavailable.
(9) If an individual is a nongeelligible individual and meets the requirements for conversion coverage pursuant to KRS 404.18-140, the individual shall not be eligible for coverage under Kentucky Access until—

(a) The time period for electing conversion coverage has expired; or

(b) Coverage under conversion becomes unavailable.

(10) Nothing in subsection (9) of this section shall prevent an individual from qualifying for Kentucky Access who has received a premium conversion rate that is higher than a Kentucky Access premium rate for substantially similar coverage in accordance with KRS 304.17B-016B(20).

(11) An individual shall not be eligible for Kentucky Access if—

(a) The individual is applying as an eligible individual and one of the following applies—

i. The Kentucky Access premium, deductible, coinsurance, or copayment is partially or entirely paid for or reimbursed by the person's employer, or

ii. The individual's employer offers a health benefit plan—A health benefit plan may include an individual policy issued through, or with the permission of, an employer for its employees in accordance with KRS 304.17A-2006(b).

(b) The individual is applying pursuant to KRS 304.17B-016(2) and the Kentucky Access premiums, deductibles, coinsurance, or copayment is partially or entirely paid for or reimbursed by any of the following—

1. A government-funded or-sponsored program;

2. A government agency;

3. A health care provider;

4. A public or private foundation;

5. A church or church-affiliated organization;

6. An employer of the individual;

7. A person except for the individual or the individual's—

a. Parent;

b. Adult child;

c. Guardian; or

d. Spouse.

(12) An individual who is applying for Kentucky Access and who is entitled to premium-free Medicare Part A as determined by the Centers for Medicare and Medicaid Services shall not be eligible for coverage under Kentucky Access.

Section 3. Effective Date of Coverage. (1)(a) Unless a future effective date is requested by an applicant and granted in accordance with subsection (1)(b) of this section, coverage for Kentucky Access shall be effective the first day of the month following the month of application in accordance with KRS 304.17B-016(3).

(b) Kentucky Access shall grant a future effective date upon request for an enrollee whose prior coverage will terminate within three (3) months of the month of application. The effective date of Kentucky Access coverage shall be the first day after the applicant's prior coverage terminates.

(2) If a determination of eligibility is overturned on appeal pursuant to Section 7 of this administrative regulation, coverage for Kentucky Access shall be effective in accordance with subsection (1)(a) of this section.

(3) A dependent child added to an enrollee's plan shall have coverage under Kentucky Access beginning—

(a) From moment of birth for a newborn child of an otherwise eligible Kentucky Access enrollee, in accordance with KRS 304.17B-042;

(b) On the date of filing of a petition for adoption of a child, in accordance with KRS 304.17A-140;

(c) On the date of filing an application for appointment as a court-appointed custodial guardian of a minor child, in accordance with KRS 304.17A-140; or

(d) On the first day of the month following the month of application to add to Kentucky Access a dependent child described in paragraph (a), (b), or (c) of this subsection.

(4) A dependent spouse added to an enrollee's plan within thirty-one (31) days of a qualifying event shall have coverage under Kentucky Access beginning on the date of the qualifying event.

Section 4. Proof of Eligibility. (1) An individual shall demonstrate state eligibility by providing the following to the third-party administrator in accordance with Section 2 of this administrative regulation:

(a) An eligible individual who is qualifying pursuant to KRS 304.17B-015(1) shall submit documentation of at least eighteen (18) months of prior, countable, credible coverage provided by one or more prior insurers or employers and documentation that the most recent coverage was group, governmental, or church plan coverage.

(b) An individual who is qualifying pursuant to KRS 304.17B-015(2) shall submit one (1) of the following:

1. A copy of a notice of rejection from one (1) insurer for individual health care coverage substantially similar to the Kentucky Access coverage for which the individual is applying, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later;

2. A copy of a notice of a premium rate for individual health care coverage offered by an insurer that exceeds the Kentucky Access premium rate for substantially similar coverage, dated during the fifty-nine (59) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later;

3. Documentation from a physician dated within one (1) year preceding the effective date of Kentucky Access coverage stating the diagnosis of a high-cost condition as listed in KRS 304.17B-001(14).

(c) An individual who is qualifying as a GAP-qualified individual pursuant to KRS 304.17B-015(4)(a) shall submit documentation from the GAP participating insurer identifying the applicant as a GAP-qualified individual.

(d) An individual applying as a dependent pursuant to KRS 304.17B-015(4)(a) or Section 6 of this administrative regulation shall submit the documentation required by Section 6 of this administrative regulation.

(3) Proof of current Kentucky residency, required for eligible individuals applying pursuant to KRS 304.17B-016(1), shall be established by submitting documentation which may include a copy of—

(a) A valid Kentucky driver's license issued within the past three (3) months;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence issued within the past three (3) months;

(c) A receipt in the applicant's name for dwelling expenses in Kentucky, which shall be dated within the most recent three (3) months before the date of application for Kentucky Access. This receipt may be for one (1) of the following payments—

1. Mortgage;

2. Rent or


(4) Proof of twelve (12) month Kentucky residency, required for individuals applying pursuant to KRS 304.17B-015(2) shall be established by submitting documentation which may include a copy of—

(a) A valid driver's license, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(c) A resident Kentucky income tax return for the most recent twelve (12) month tax period; or

(d) A receipt in the applicant's name for dwelling expenses in Kentucky dated twelve (12) months or more before the date of application for Kentucky Access for one (1) of the following payments—

1. Mortgage;

2. Rent or


(5) An individual who is eligible for coverage under Kentucky Access pursuant to KRS 304.17B-015(2) or (4) shall be subject to a preexisting condition exclusion for any mental or physical condition for which medical advice, diagnosis, care or treatment was recommended or received within the last six (6) month period ending on the individual's enrollment date.
(a) The exclusion period shall not exceed a period of
twelve (12) months following the enrollment date; and
(b) The exclusion shall not apply to:
   1. Genetic information described as a condition in the absence
      of a diagnosis;
   2. Domestic violence;
   3. Newborn children if added to Kentucky Access within thirty-
one (31) days of the date of birth; and
   4. Adopted children if added to Kentucky Access on the date
      the child was legally placed for adoption or the date the child was
      legally adopted.
(b) An individual who is eligible pursuant to KRS 304.17B-
015(2) or (4)(a), may submit documentation of countable, credi-
table coverage, if any, to reduce the preexisting condition exclusion
period as established in subsection (4) of this section by the
number of months of his countable, creditable coverage.
(c) If an individual terminated or was terminated from Kentucky
Access coverage within the past twelve (12) months, he may reestab-
lish eligibility, as permitted by KRS 304.17B-015(4)(c), by sub-
mitting written documentation of a good faith reason for the ter-
minal, including:
   (a) Loss of employment;
   (b) Moving out of state and returning;
   (c) Change in family status; or
   (d) Other situations beyond the individual's control.
Section 5. Reasons for Ineligibility. (1) An individual shall not be
eligible for Kentucky Access if:
(a) The individual is applying as an eligible individual and one
   (1) of the following applies:
   1. The Kentucky Access premium, deductible, coinsurance, or
      copayment is partially or entirely paid for or reimbursed by
      the person's employer or
   2. The individual's employer offers a health benefit plan. A
      health benefit plan may include an individual policy issued through
      or with the permission of, an employer for his employees in accor-
      dance with KRS 304.17A-200(6).
(b) The individual is applying pursuant to KRS 304.17B-015(2)
and the Kentucky Access premiums, deductible, coinsurance, or
   copayment is partially or entirely paid for or reimbursed by any of the
   following:
   1. A government-funded or sponsored program;
   2. A government agency;
   3. A health care provider;
   4. A public or private foundation;
   5. A church or church-affiliated organization;
   6. An employer of the individual;
   7. A business entity; or
   8. A person except for the individual or the individual's:
      a. Parent;
      b. Adult child;
      c. Guardian;
      d. Spouse; or
   e. Court-ordered payee.
(2) An individual who is applying for Kentucky Access and is
eligible to premium-free Medicare Part A as determined by the
Centers for Medicare and Medicaid Services shall not be eligible
for coverage under Kentucky Access.
Section 6. Dependent Eligibility. (1) A spouse or a child [who is
a-twelve (12)-month Kentucky resident] may receive coverage as a
dependent of an enrollee if:
(a) The spouse or child is a twelve (12) month resident of Ken-
   tucky; or
(b) The spouse or child is a current resident of Kentucky and
   the enrollee is an eligible individual pursuant to KRS 304.17B-
015(1).
(c) A child shall be an eligible dependent if he is unmarried and:
   (1) Under the age of nineteen (19); or
   (2) A student:
      a. Under the age of twenty-five (25), and
      b. Enrolled full-time at an accredited educational institution; and
      c. Chiefly dependent upon the enrollee for support;
   (2) Under the age of twenty-five (25) regardless of student
   status; and
   (2) Covered through the purchase of a dependent rider; or
   (c) A child of any age who is:
      1. Incapable of self-sustaining employment by reason of men-
      tal or physical disability; and
      2. Chiefly dependent upon the enrollee for support.
(3) Documentation of dependent eligibility shall be submitted
by the enrollee to the third-party administrator by the applicant
when applying for coverage and as specified in subsection (3)(a)
through (c) of this section annually thereafter, by the enrollee.
(a) For eligibility pursuant to subsection (2)(a), (b)(1) of this
section:
   1. Federal or state income tax records for the most recent
twelve (12) month tax period, submitted annually; and
   2. [Letter-of] Verification of full-time student status, submitted
   annually.
(b) For eligibility pursuant to subsection (2)(c) of this section:
   1. Federal or state income tax records for the most recent
twelve (12) month tax period, submitted annually; and
   2. Letter of determination of Disability from the Social Security
   Administration.
(4) An enrollee who is an eligible dependent pursuant to sub-
section (2)(a) of this section shall submit documentation of depend-
ent eligibility pursuant to subsection (3) of this section within sixty
(60) days after a child covered as a dependent of the enrollee reaches age nineteen (19).
(5) An enrollee shall submit to the third-party administrator
documentation of dependent spouse eligibility, which may include a
copy of:
   (a) A joint federal or state tax return for the most recent twelve
   (12) month tax period;
   (b) A marriage certificate; or
   (c) A signed attestation (or affidavit verifying the existence of a
      valid marriage between the enrollee and dependent spouse (Sec-
      tion 4--Application Process). (1) An applicant for Kentucky Access:
      (a) May select one (1) of the following types of coverage:
         1. Individual; or
         2. Family; and
      (b) Shall submit to the third-party administrator:
         (1) A completed:
           a. Application form-KHPCA-1 (12/2005), if the person is
              applying for Kentucky Access pursuant to Section 2 of this
              administrative regulation;
           b. Section of application form KHPCA-1 (12/2005), if the
              person is applying for dependent coverage when the initial ap-
              plication for coverage is submitted; or
           c. Application form KHPCA-2 (06/01), if the person is applying
              for dependent coverage after the enrollee is enrolled in Ken-
              tucky Access; and
         2. Premium payment for at least two (2) months or more, de-
            pending upon the premium payment option selected pursuant to
            Section 5 of this administrative regulation.
         (2) Application processing shall be performed as follows:
           (a) Upon the receipt of an application, the third-party adminis-
               trator's mail room shall log the date of receipt of the application
               and process applications in order of receipt.
           (b) The third-party administrator shall review each application
to determine if the application is complete.
           (c) If an application is complete, the third-party administrator
              shall determine within fifteen (15) business days of receipt of
              the application if the applicant is eligible for Kentucky Access
              coverage.
           (d) If an application is not complete, the third-party adminis-
               trator shall:
               1. Send the application and
               2. Notify the applicant in writing that the application is incom-
                  plete. The written notification shall:
                  a. Identify the missing information needed to complete the
                     application; and
                  b. Give the applicant thirty (30) days to provide the informa-
                     tion.
            (e) If an applicant provides the information within thirty (30)
               days, the third-party administrator shall, within fifteen (15) busi-
               ness days of receipt of the information, determine if the applicant is eli-
gible for Kentucky Access.

(7) If an applicant fails to provide the information within thirty (30) days of an identification card, the third-party administrator shall determine the applicant's eligibility.

1. The reason for ineligibility;
2. The right to appeal the determination in accordance with Section 6 of the administrative regulation.

(8) A determination of ineligibility shall be in accordance with subsection (7) of this section.

(9) The third-party administrator shall not preclude an applicant from filing a new application for Kentucky Access.

(10) After a determination of eligibility, the third-party administrator shall send the applicant within seven (7) days:
(a) An identification card;
(b) A health benefit plan coverage document.

(11) After a determination of ineligibility, the third-party administrator shall send to the applicant a letter of notification of the
determination of ineligibility; and
the right to appeal the determination in accordance with Section 6 of the administrative regulation.

Section 6. Appeal of Determination of Ineligibility. (1) An applicant may request a reconsideration of a determination of ineligibility by filing a written appeal of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of the determination.

(2) The third-party administrator shall render a decision within thirty (30) days of receipt of the request for reconsideration.

(3) An applicant may appeal the third-party administrator’s decision on reconsideration by filing a written request for a review by the office. Within sixty (60) days, the office shall:
(a) Review the applicant’s appeal of the decision; and
(b) Refer the applicant for an administrative hearing.

(4) Upon referral by the office, an administrative hearing shall be scheduled in accordance with KRS 304.2-310(4).

Section 7. Appeals. (1) An applicant may request a reconsideration of a determination of ineligibility within thirty (30) days of a determination of ineligibility by filing a written appeal of the basis for the request for reconsideration with the third-party administrator.

(2) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:
1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(b) If the third-party administrator grants the request for reconsideration, the third-party administrator shall conduct reevaluation based upon the request of additional premium due for the next coverage period.

(c) If Kentucky Access denies, limits, or reduces coverage for a treatment, procedure, drug, or device, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(1) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:
1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(c) If Kentucky Access denies coverage based on a plan delivery rule within the health benefit plan coverage document, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:
1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(c) An enrollee who fails to provide documentation of dependent eligibility in accordance with Section 6(3) of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period (month) in which the thirty (30) day notice, required by KRS 304.17A-245(1), expires;

(c) An enrollee who fails to provide documentation of dependent eligibility in accordance with Section 6(3) of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period during which the documentation is required;

(c) An enrollee who fails to provide Kentucky Access with written notification of a change in resident address may be terminated by the third-party administrator at the end of the coverage period during which notification of the incorrect address is received.

(c) Coverage under Kentucky Access shall cease when the first of the following circumstances occur:

1. An enrollee gives written notice that the enrollee is no longer a resident of Kentucky; or
2. Documented evidence is received by Kentucky Access that the enrollee is no longer a resident of Kentucky; or
3. On the later date that occurs:
   1. Written notice of termination is received from the enrollee; or
   2. Written termination is requested by the enrollee; or
   3. Upon the death of the enrollee; or
   4. On the date the lifetime limit of KRS 304.17B-015(4)(d) is met; or
   5. If the premium amount due for the policy period is not received by the premium due date, subject to the grace period con-
tained in KRS 304.17-070:
(f) If premiums are paid by an unauthorized party in accordance with Section 5(1)(b) of this administrative regulation; or
(g) If the member becomes eligible for coverage under Medicare or Medicaid.

1. If a member is eligible for Medicaid or Medicare on the effective date of this administrative regulation, the member's coverage shall terminate on January 1, 2010.

2. If a member becomes eligible for Medicaid or Medicare subsequent to the effective date of this administrative regulation, the member's coverage shall terminate on the date the member becomes eligible for coverage under Medicaid or Medicare. [on the date that Medicaid Part D coverage began.]

Section 9(16) Premium Notice: (1) Premiums for Kentucky Access shall be billed by the third-party administrator by the first business day of each month for the following month's coverage.

(2) Premiums not received by the premium due date, subject to the grace period contained in KRS 304.17-070, shall result in termination of Kentucky Access coverage effective the last date through which the premium was paid in accordance with KRS 304.17A-245(2) first day of the month for which the premium is applicable, subject to the grace period contained in KRS 304.17-070.

(3) Premiums may be paid in advance by arrangement with the third-party administrator as follows:
(a) Monthly;
(b) Quarterly;
(c) Semiannually; or (d) Annually.

(4) Premium payments shall be accepted from an authorized party in accordance with Section 5(1)(b) of this administrative regulation in the following formats:
(a) Paper checks;
(b) Electronic funds transfer arranged in advance with the third-party administrator.

(5) Premium amounts for any dependant added to Kentucky Access shall be prorated based on the effective date of coverage.

(6) Premium amounts for coverage issued by Kentucky Access are reviewed and are subject to change by the department (office) on an annual basis pursuant to KRS 304,178-013.

(a) A new enrollee shall be charged the premium rate(s) in force on his effective date of coverage.
(b) An established enrollee shall be charged the premium rate(s) in force on each renewal date.

Section 10.9 Nonduplication of Benefits. (1) Pursuant to KRS 304,178-019(3), Kentucky Access shall be the payor of last resort whenever any other benefit or source of third-party payment is payable. Benefits otherwise payable under Kentucky Access shall be reduced by all amounts paid or payable through:
(a) Other health insurance;
(b) Hospitalization and medical expense benefits covered under:

1. Workers' compensation coverage;
2. Automobile medical payment or liability insurance;
3. Any state or federal law or program.

(2) Pursuant to KRS 304.178-007(3), the office shall have a cause of action against an enrollee for the recovery of the amount of benefits paid by Kentucky Access that are not for covered expenses. [Section 10.9 Agent Referral Fee. (1) An agent referral fee of fifty (50) dollars shall be paid to an agent who refers an applicant who is subsequently enrolled in Kentucky Access, pursuant to KRS 304.178-007(13).
(2) Section IX of application form HIPMC-KA-1 (12/2006) shall be completed designating the referring agent.]

Section 11. General Provisions. Information required to be submitted pursuant to Sections 2 and 7 of this administrative regulation shall be considered received in a timely manner if it is postmarked three (3) or more business days before the date the required information is due.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application form HIPMC-KA-1, 7/2009/12/2006; and
(b) Application form HIPMC-KA-2, 7/2009/06/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department (office) Web site at http://insurance.ky.gov [http://kel.pr.rky.gov/kentucky].

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: July 14, 2009
FILED WITH LRC: July 15, 2009 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2009 at 9 a.m. ET at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 2009 five workdays prior to the hearing, of their intent to attend. If no notification of Intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.
(b) The necessity of this administrative regulation: KRS 304.178-031 requires the Office of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation is needed to inform individuals seeking coverage in Kentucky Access about the process for application and the dates their coverage will be effective. This administrative regulation is also needed to inform existing members of premium payment requirements, reasons for termination and appeal rights.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.178-031 requires Office of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation establishes eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will establish the specific procedures that must be followed to become a member of Kentucky Access and maintain coverage through Kentucky Access.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment will correct agency names to implement EO 2009-535, define "substantially similar coverage" to clarify the use of this term within Kentucky Access' proce-
dures, set forth the procedures to be followed by both the applicant and the third-party administrator to electronically process applications, clarify that an application will not be considered withdrawn if the payment is made on time, clarify the documentation needed to demonstrate eligibility for each eligibility category, amend the dependent eligibility requirements to implement HB 440 2008 GA, amend the appeals process to allow the member 10 business days to respond to a request for additional information and to include a specific process for appealing decisions relating to limitations of coverage and denials based on plan delivery rules, specify when a future effective date of coverage will be granted, amend the regulation to terminate a member’s coverage when the member becomes eligible for Medicare, delete the section regarding agent referral fees as that language is included in KRS 304.17B-007, amend the application form based on commonly asked questions, and reorganize the regulation into a more readable format.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to implement an electronic application, implement legislation enacted by the 2008 General Assembly, and to provide clarity to the Kentucky Access procedures based on commonly asked questions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17B-031 requires Office of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation establishes eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will establish the specific procedures that must be followed to electronically apply to Kentucky Access, implement the changes to the definition of a dependent from HB 440 2008 GA, clarify the process for applications received without premium payment, requests for future effective dates, appeals for limitations of coverage and denials based on plan delivery rules, and provide other technical changes to address commonly asked questions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will affect the same number of individuals, 4,400 members of Kentucky Access, an undetermined number of future applicants to Kentucky Access and the program’s third-party administrator.

(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) 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 program’s third-party administrator will be required to establish an electronic application for the Kentucky Access program. Additionally, internal business rules will need to be amended to fully implement the clarifications in this amendment for future effective dates, appeals for limitations of coverage and denials based on plan delivery rules, and provide other technical changes to address commonly asked questions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not include additional costs for applicants for or current members of Kentucky Access. The existing administrator contract includes allowances for the program amendments included in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can obtain and maintain coverage through Kentucky Access. By complying with this amendment, the program’s third-party administrator will avoid penalties as established within its existing contract.

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

(a) Initially: The day-to-day operations of Kentucky Access are handled by a third-party administrator. The contract is competitively bid for a 4-year period with the option to renew for another two years. The contract amount for July 1, 2008 through June 30, 2010 is $6,000,000.

(b) On a continuing basis. The cost will be approximately $6,000,000 for each two-year period.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all applicants and members of Kentucky Access.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Kentucky Access program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.17B-031.

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 next full year the administrative regulation is to be in effect:

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

(c) How much will it cost to administer this program for the first year? This regulation should initially cost $6,000,000. This amount is based on the current, competitively bid contract for the administration of Kentucky Access. The amount to administer Kentucky Access for FY 08-10 is $6,000,000.

(d) How much will it cost to administer this program for subsequent years? This regulation should cost approximately $6,000,000 in subsequent two-year periods.

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

Revenues (+/-):
Expenses (+/-):
Other Explanation:
CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Healthcare Facilities Management  
(Amendment)

907 KAR 3:183. Supplemental payments to participating DRG hospitals [create: Inpatient Hospital Special Reimbursement]


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes provisions regarding supplemental payments totaling $195 million in aggregate to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which began, in April 2009, to accept the supplemental payments.

Section 1. Definitions. (1) "Aggregate cost gap" means the difference between a hospital's cost and Medicaid payments received by the hospital for DRG services for the period beginning July 1, 2004 through June 30, 2007 trended to the midpoint of the June 2002 through December 2010 payment period.

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

(3) "DRG" means diagnosis-related group.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(6) "Related to the provider" is defined by 42 C.F.R. 413.17.

(7) "University hospital" is defined by KRS 205.639(4).

Section 2. Supplemental Payments to DRG Hospitals Which Have Agreed To Accept the Payments. (1) The department shall issue eight (8) payments:

(a) To a hospital:  
1. Reimbursed via the DRG reimbursement methodology which began, in April 2009, to accept the supplemental payments, and
2. As a supplement to its reimbursement for inpatient hospital services paid via the DRG reimbursement methodology:
   (b) Beginning with two (2) payments issued during the calendar quarter in which this emergency administrative regulation is enacted followed by one (1) payment for each subsequent calendar quarter until the quarter ending December 31, 2010; and
   (c) Representing calendar quarters beginning with the calendar quarter ending March 31, 2009 and ending with the calendar quarter ending on December 31, 2010.

(2) A supplemental payment referenced in subsection (1) of this section shall be paid from an aggregate supplemental payment pool:

(a) That shall not exceed $195 million; and

(b) That shall be reduced by the amount of the share of a hospital, if any, that foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation.

(3) A hospital's share of the aggregate supplemental payment pool referenced in subsection (2) of this section shall:

(a) Equal its proportionate share of its aggregate cost gap compared to the aggregate cost gap of all hospitals reimbursed via the DRG reimbursement methodology;

1. Which agreed to accept the supplemental payments referenced in subsection (1) of this section; and

2. Except for the excluded hospitals referenced in Section 4(2), (3), or (4) of this administrative regulation:
   (b) Be divided into thirty-six (36) equal units; and
   (c) Be paid on a descending balance basis with the:
      1. First (1st) quarterly payment representing eight (8) equal units;
      2. Second (2nd) quarterly payment representing seven (7) equal units;
      3. Third (3rd) quarterly payment representing six (6) equal units;
      4. Fourth (4th) quarterly payment representing five (5) equal units;
      5. Fifth (5th) quarterly payment representing four (4) equal units;
      6. Sixth (6th) quarterly payment representing three (3) equal units;
      7. Seventh (7th) quarterly payment representing two (2) equal units; and
      8. Eighth (8th) quarterly payment representing one (1) unit.

Section 3. Foregoing Supplemental Payments. (1) A hospital shall forego its share of the aggregate supplemental payment pool referenced in Section 2(2) of this administrative regulation if at any time does not agree to accept the supplemental payments referenced in Section 2(1) of this administrative regulation.

(2) If a hospital foregoes its share of the aggregate supplemental payment pool referenced in Section 2(2) in this administrative regulation, its share of the aggregate supplemental payment pool shall:

1. Not be paid to the hospital; and

2. Be subtracted from the $195 million aggregate supplemental payment pool.

Section 4. Excluded Hospitals. The department shall not make a supplemental payment referenced in Section 2(1) of this administrative regulation to the following hospitals reimbursed via the DRG reimbursement methodology:

(1) A hospital which foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation;

(2) A university hospital;

(3) A pediatric teaching hospital; or

(4) A hospital which owns, operates, is any way affiliated with, has any common ownership with, or has any common operation with a pediatric teaching hospital.

Section 5. Federal Financial Participation. A supplemental payment referenced in Section 2(1) of this administrative regulation shall be contingent upon the department's receipt of federal financial participation for the payment.

Section 6. Upper Payment Limit. (1) A supplemental payment referenced in Section 2(1) of this administrative regulation shall not exceed the limit established in:

(a) 42 C.F.R. 447.271;
(b) 42 C.F.R. 447.72; or
(c) Any other applicable statute or regulation.

(2) No provision in this administrative regulation shall be interpreted to require the department to make a payment which:

(a) Would exceed the limit established in;

1. 42 C.F.R. 447.271;
2. 42 C.F.R. 447.72; or
3. Any other applicable statute or regulation;

(b) Is not subject to federal financial participation; or

(c) Is subject to federal financial participation [as mandated by 2006-Ky-Aets-ch-262, Part I, H.3-b-23, establishes special reimbursement for an inpatient acute care hospital, a freestanding rehabilitation hospital, a freestanding psychiatric hospital, a long-term acute care hospital, and a state-designated rehabilitation teaching hospital that is not state-owned or operated].

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 206.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance-tax proceeds.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(2) "Department" means the Department for Medicaid Services or its designee;
(4) "Diagnosis-related group" or "DRG" means a clinically-similar-grouping of services that can be expected to consume similar resources;
(5) "Relative weight" means the factor assigned to each Medicare or Medicaid DRG classification that represents the average resources required for a Medicare or Medicaid DRG classification relative to the average resources required for all relevant discharges in the nation or state;
(6) "State designated rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:
(a) Provides at least 3,000 days of rehabilitation care to Medicaid eligible recipients in a fiscal year;
(b) Provides at least seventy-five (75) percent of the statewide total of inpatient care to Medicaid eligible recipients; and
(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution-based discharge.

Section 2 – Inpatient Hospital Reimbursement. Pursuant to 2006 Ky. Acts ch. 252, Part I, H 2 to 23 the department shall:
(1) Reimburse a lump sum payment to an inpatient acute care hospital based on the hospital's Medicaid recipient DRG volume already adjudicated for claims with admission dates of July 1, 2006 through June 30, 2006;
(2) Increase each DRG relative weight by seventeen (17) percent subject to the availability of funds. The DRG relative weight increase shall be a continuation of the relative weight increase which expired at close of business June 30, 2006; established in 607 KAR 3:180D submitted to the Legislative Research Commission on May 4, 2006 and shall not be an additional increase;
(3) Reimburse two (2) lump sum payments to an inpatient freestanding psychiatric hospital, inpatient freestanding rehabilitation hospital, inpatient long-term acute care hospital, or an in-state state-designated rehabilitation teaching hospital that is not state-owned or operated, as follows:
(a) One (1) lump sum payment shall be based on the hospital's Medicare patient days covering admission dates from July 1, 2006 through June 30, 2006; and
(b) One (1) lump sum payment shall be based on the hospital's Medicare patient days covering admission dates from July 1, 2006 through June 30, 2007; and
(4) Reimburse two (2) lump sum payments to an inpatient state-designated rehabilitation teaching hospital that is not state-owned or operated, as follows:
(a) One (1) lump sum payment shall equal eighty ($80) dollars per Medicare patient-day for admission dates from July 1, 2006 through June 30, 2006; and
(b) One (1) lump sum payment shall equal eighty ($80) dollars per Medicare patient-day for admission dates from July 1, 2006 through June 30, 2007.

Section 3 – Supplemental Payments to Appalachian Regional Hospital System. (1) The department shall make quarterly supplemental payments to the Appalachian Regional Hospital system in an amount that is equal to the lesser of:
(a) The difference between what the department pays for inpatient services pursuant to 607 KAR 1.013 and what Medicare would pay for inpatient services to Medicaid eligible individuals, or
(b) $3.5 million per year-in-aggregate;
(2) A quarterly payment to a hospital in the Appalachian Regional Hospital System shall be based on its Medicare claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System;
(3) A supplemental payment made in accordance with subsection (1) of this section shall be:
(a) Paid on a pro-rata basis provided on or after July 1, 2006; and
(b) Subject to the availability of federal and state resources that supply the state's share to be matched with federal funds; and
(c) In compliance with the limitations in 42 C.F.R. 447.272.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: June 23, 2009
FILED WITH LRC: June 26, 2009 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the administrative regulation shall, if requested, be held prior to August 21, 2009 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 August 31, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 504-7905, fax (502) 504-7905.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation establishes that the Department for Medicaid Services (DMS) will issue eight (8) supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients and to prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients.
(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 authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients.
(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 establishes that the Department for Medicaid Services (DMS) will issue eight (8) supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments. Additionally, it eliminates provisions which have expired and clarifies that the supplemental payments are contingent upon the provision of federal financial participation by the Centers for Medicare and Medicaid Services (CMS) to the department.
(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients and to prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid.
Program services as well as impose an extraordinarily injurious and unsound financial burden on the citizens of Kentucky.

(c) How the amendment to this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and, thus, protect the health, safety and welfare of Medicaid recipients. Additionally, the amendment rendering supplemental payments contingent upon receipt of federal funding conforms to the content of authorizing statutes by maintaining the viability of the Medicaid Program. CMS provides a significant majority of program funding to the department. The department, as part of its mission to serve the citizens of the Commonwealth of Kentucky in a fiscally responsible manner, must strive to ensure that program policies are contingent upon receipt of federal funding. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid Program services as well as impose an injurious and unsound financial burden on the citizens of Kentucky.

(d) How the amendment to 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 authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and, thus, protect the health, safety and welfare of Medicaid recipients. Additionally, the amendment rendering supplemental payments contingent upon receipt of federal funding will assist in the effective administration of authorizing statutes by maintaining the viability of the Medicaid Program. CMS provides a significant majority of program funding to the department. The department, as part of its mission to serve the citizens of the Commonwealth of Kentucky in a fiscally responsible manner, must strive to ensure that program policies are contingent upon receipt of federal funding. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid Program services as well as impose an injurious and unsound financial burden on the citizens of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment affects the sixty-two (62) hospitals reimbursed via a DRG reimbursement methodology which agreed to the supplemental payments.

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

(a) 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 sixty-two (62) hospitals reimbursed via a DRG reimbursement methodology which agreed to the supplemental payments will need to continue agreeing to the supplemental payments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The amendment imposes no cost on the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The groups identified in question (3) will receive supplemental payments from DMS.

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

(a) Initially: The amendment will cost DMS $185 million (federal and state combined) over a period of eight (8) calendar quarters. DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

(b) On a continuing basis: The amendment will cost DMS $195 million (federal and state combined) over a period of eight (8) calendar quarters. DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources include federal funds authorized under Title XIX of the Social Security Act and authorized under the American Recovery and Reinvestment Act of 2009, matching funds of general fund appropriations and Medical Assistance Revolving Trust 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. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is being applied? This administrative regulation establishes supplemental payments to hospitals reimbursed via the DRG reimbursement methodology which agreed, in April 2009; to the supplemental payments. A hospital's share of the aggregate supplemental payment pool will equal its proportionate share of its aggregate cost gap compared to the aggregate cost gap of all hospitals reimbursed via the DRG reimbursement methodology which agreed to accept the supplemental payments.

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 (e.g., Department for Medical Services (DMS) as well as eight (8) county-owned hospitals will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq. KRS 194A.030(2), KRS 194A.050(1), KRS 205.520(2) and (3) and KFS 205.660(1)(a) and (2) authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Total payments, in aggregate, to the eight (8) county-owned hospitals agreeing to the supplemental payments equal $6.4 million (federal and state combined). $5.6 million of the $6.4 million would be paid in calendar year 2009 with the balance $1.8 million to be paid in calendar year 2010.

(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 Total payments, in aggregate, to the eight (8) county-owned hospitals agreeing to the supplemental payments equal $6.4 million (federal and state combined). $5.6 million of the $6.4 million would be paid in calendar year 2009 with the balance $1.8 million to be paid in calendar year 2010.

(c) How much will it cost to administer this program for the first year? The amendment will cost DMS $185 million (federal and state combined.) DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

(d) How much will it cost to administer this program for subsequent years The amendment will cost DMS $195 million (federal and state combined) DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar 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:
GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(New Administrative Regulation)

201 KAR 11:215. License recognition; application requirements.

RELATES TO: KRS 324.141, 324.281(5) and (7)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282,
324.141(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
324.281(5) and 324.282 authorize the Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. In addition, KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. This administrative regulation establishes license-recognition procedures to replace former reciprocal licensing.

Section 1. Definitions. (1) "License recognition" means a licensing process that replaces reciprocal agreements and authorizes the commission to issue a Kentucky license to an individual who holds an actively-licensed and unrestricted out-of-state sales associate's or broker's license, or the equivalent of either.

(2) "Qualifying jurisdiction" means the state in which an applicant for license by recognition is actively licensed when the applicant files his or her application with the commission.

(3) "Unrestricted license" means a license that is not under any order of limitation or discipline by another jurisdiction's regulatory body.

Section 2. (1) An individual who is actively engaged, outside Kentucky, in real estate brokerage activities as a sales associate or broker, or the equivalent of either, may apply for a Kentucky license that is the same as, or equivalent to, the individual's out-of-state license, if the individual's out-of-state license is active and unrestricted.

(2) To obtain a license by recognition, an individual shall:

(a) File with the commission a criminal background check, which shall be processed by the FBI in accordance with the requirements set out in KRS 324.045, Section (4), and 201 KAR 11:430;

(b) File with the commission a certification of licensure issued by the regulatory authority of each state in which the individual has, at any time, held a real estate license, in accordance with KRS 324.141(2);

(c) Pass the state law portion of the licensing examination for either a sales associate's license or a broker's license, whichever is applicable and is the equivalent of the individual's active out-of-state license at the time that his or her application is filed with the commission;

(d) Apply for a Kentucky license within sixty (60) days of completion of the licensing examination. An applicant who fails to apply for a Kentucky license within the sixty (60) day period shall retake the examination.

Section 3. A licensee who has obtained a Kentucky license by recognition shall comply with the provisions of KRS Chapter 324 and the administrative regulations applying to real estate brokers and sales associates.

KEN PERRY, Chairperson
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 1:30 p.m., local time, in the conference room of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows out-of-state active real estate agents to apply for a Kentucky license without having to complete the entire application process required of individuals who have never held any type of real estate license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a procedure for out-of-state active real estate agents to apply for a Kentucky license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides the application process and procedures that are necessary to implement licensure by license recognition, in accordance with KRS 324.141.

(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 statute by establishing the application process for license recognition.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: All applicants for licensure, the Kentucky Association of Realtors®, and the Kentucky Real Estate Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To apply for a Kentucky license by recognition, out-of-state applicants must obtain a letter of certification from their regulatory authority, complete an FBI criminal background check, and pass the state law portion of the licensing examination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Both in-state and out-of-state applicants will incur the existing application costs, consisting of the fee for an FBI criminal background check ($18), the licensing examination fee ($75) and the initial license fee ($55). In addition, out-of-state applicants could also incur a certification-of-license cost, along with the cost for errors and omissions insurance coverage, which all active licensees are required to obtain under the existing regulation.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The out-of-state liscence process will become more efficient and uniform, as a result of compliance with this regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding, as this regulation will not cost the agency any money.

(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 need for an increase in fees or funding to implement this regulation.

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

TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

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 Real Estate Commission is the only entity affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), 324.282, and 324.141(1)(b)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs will be associated with this change.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation: This regulation will not result in any revenue for state or local governments.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)

401 KAR 5:310. Surface water permit fees.

RELATES TO: KRS 224.01-010, 224.10-110, 224.16-050, 224.70-100, 224.70-110, EO 2008-507, 2008-531
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230(3), 224.16-050, 224.70-120, 33 U.S.C. 1323(a), EO 2008-507, 2008-531
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-230(3) authorizes the cabinet to amend, by administrative regulation, the discharge permit fees authorized by KRS 224.70-120. EO 2008-507 and 2008-531, effective June 15, 2008, abolished the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes fees for reviewing surface water permits.

Section 1. Individual Permit Fees. The fee for review of an individual permit to discharge pollutants into waters of the Commonwealth shall be as established in Table 1 in this section.

<table>
<thead>
<tr>
<th>Table 1: Individual Permit Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Industry</td>
</tr>
<tr>
<td>Minor Industry</td>
</tr>
<tr>
<td>Nonprocess Industry</td>
</tr>
<tr>
<td>Large, Non-publicly-owned Treatment Works</td>
</tr>
<tr>
<td>Intermediate, Non-publicly-owned Treatment Works</td>
</tr>
<tr>
<td>Small, Non-publicly-owned Treatment Works</td>
</tr>
<tr>
<td>Agriculture (CAFC)</td>
</tr>
<tr>
<td>Surface Mining Operation</td>
</tr>
<tr>
<td>$7,000</td>
</tr>
<tr>
<td>$4,500</td>
</tr>
<tr>
<td>$2,200</td>
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<tr>
<td>$3,700</td>
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<tr>
<td>$1,200</td>
</tr>
<tr>
<td>$3,300</td>
</tr>
</tbody>
</table>

Section 2. General Permit Fees. The fee for review of a general permit to discharge pollutants into waters of the Commonwealth shall be as established in Table 2 of this section.

<table>
<thead>
<tr>
<th>Table 2: General Permit Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal Mining</td>
</tr>
<tr>
<td>Non-Coal Mining</td>
</tr>
<tr>
<td>Transportation Facility</td>
</tr>
<tr>
<td>Drinking Water Treatment Plant</td>
</tr>
<tr>
<td>Groundwater Remediation</td>
</tr>
<tr>
<td>Storm Water Construction</td>
</tr>
<tr>
<td>CAFO</td>
</tr>
<tr>
<td>Storm Water Other</td>
</tr>
<tr>
<td>$1,300</td>
</tr>
<tr>
<td>$1,200</td>
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<tr>
<td>$0</td>
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<td>$600</td>
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<td>$250</td>
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<td>$600</td>
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<tr>
<td>$600</td>
</tr>
</tbody>
</table>

Section 3. Kentucky No Discharge Operational Permit (KNDOP) Fees. The fee for review of a KNDOP shall be as established in Table 3 of this section.

<table>
<thead>
<tr>
<th>Table 3: KNDOP Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Animal Feeding Operation</td>
</tr>
<tr>
<td>Medium Animal Feeding Operation</td>
</tr>
<tr>
<td>Small Animal Feeding Operation</td>
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<tr>
<td>Industrial</td>
</tr>
<tr>
<td>Sanitary</td>
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<td>$1,200</td>
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<td>$400</td>
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<td>$0</td>
</tr>
<tr>
<td>$1,200</td>
</tr>
<tr>
<td>$1,200</td>
</tr>
</tbody>
</table>

Section 4. Multiple Categories. The cabinet shall impose the single maximum fee if a discharge falls into multiple categories.

Section 5. Short Term Permits. If the cabinet issues a permit that is effective for less than five (5) years, the fee assessed pursuant to this administrative regulation shall be adjusted proportionately to the effective term of the permit.

Section 6. Publicly Owned Facilities. A publicly owned facility shall be exempt from the fees established in this administrative regulation pursuant to KRS 224.10-100(20).

Section 7. Nonprofit Organizations. (1) A nonprofit organization that qualifies for the fee established by KRS 224.16-050(5) shall be charged the fee established by that statute.

(2) A nonprofit organization requesting a reduced fee pursuant to KRS 224.16-050(5) shall submit proof of Internal Revenue Code 501(c)(3) status with the permit application.

(3) A nonprofit organization that does not qualify for the fee established in KRS 224.16-050(5) shall be charged the applicable fee established in Sections 1 through 5 of this administrative regulation.

Section 8. Payment. (1) Check or money order shall be made payable to the Kentucky State Treasurer.
(2)(a) The applicant shall submit with the application a filing fee equal to twenty (20) percent of the permit fee.

(b) An application shall not be complete before the cabinet has received the filing fee.

(3) The cabinet shall retain the filing fee if:

(a) The cabinet denies the issuance, reissuance, or modification of the permit;

(b) The cabinet finds that the application is not complete pursuant to 401 KAR 5-075, Section 1(4), and returns the application as incomplete after the applicant has failed to submit a complete application within thirty (30) days following mailing of a notice of deficiency by the cabinet; or

(c) The applicant withdraws the application.

(4)(a) The cabinet shall notify the applicant of the permit fee due after the cabinet has determined that the permit shall be issued, but before the permit shall be issued.

(b) The applicant shall submit the permit fee within thirty (30) days of the notification required by paragraph (a) of this subsection.

(5) The cabinet shall not issue a permit before receipt of the applicable permit fee.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 8, 2009
FILED WITH LRC: July 8, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 6 p.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by August 18, 2009, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adjusts the fees codified in KRS 224.70-120. This administrative regulation also creates fees for Kentucky No Discharge Operating (KNDOP) permits and general permits, which did not have fees established in statute or regulation.

(b) The necessity of this administrative regulation: Fees for review of surface water permits were incorporated into statute in 1990. Regulations establishing fees for surface water permits were originally promulgated in 1983, and were not meaningfully revised when moved to KRS 224.70-120. The cabinet has not previously established a fee for a Kentucky No-Discharge Operational Permit (KNDOP) or general permit, despite the authorization to do so by KRS 224.10-100. The Division of Water is operating well below necessary staffing levels as a partial result of the insufficient permit fees. Consequently, there is a significant permit backlog in the division. This backlog results in increased scrutiny by federal regulations, delays in economic development, and leads to processing times that barely meet, and often exceed, the regulatory timeframe for review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 224.10-230(3) authorizes the cabinet to amend, by administrative regulation, the discharge permit fees authorized by KRS Chapter 224.70-120. KRS 224.10-230(3) further states that those fees should be based on the cost of review. The Division of Water analyzed the cost associated with the issuance of each permit and developed a draft per-KRS 13A fee schedule based on full cost recovery. However, after meeting with affected stakeholders, agreement could not be reached on the proposed draft fee schedule. The Division subsequently negotiated an agreed compromise and adjusted existing fees based on the consumer price index, which represents approximately fifty percent of the Division's cost of review. The proposed fee for those permits that did not previously have a fee in statute is a reflection of the agency's actual cost. Although the proposed fee schedule does not fully support the program costs, it is a negotiated compromise to address fees for surface water permits. Please see Attachment A for an explanation of costs by permit type. KRS 224.10-100(20) exempts the collection of fees from public facilities. No attempt to collect fees for the cost of review of public facilities is included in this administrative regulation. Additionally, the Division does not intend to recover costs associated with reviewing permits for public owned facilities by transferring those costs to the fees imposed on other entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 224.10-230(3) allows for fees based on the cost of review. This administrative regulation establishes fees for categories of surface water permits for which a fee may be charged. The Division of Water has the responsibility of reviewing applications and issuing permits. These agency directed fees go directly toward the cost of implementing this program.

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

(a) How the amendment will change this existing administrative regulation: Not applicable; this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable; this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable; this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable; this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the surface water permitting program are affected by this administrative regulation. Pursuant to KRS 224.10-100(20), this administrative regulation does not establish a fee for a state or local government or for a political subdivision. The number of affected entities varies each year. Because a permit is valid for five years, the permit renewal dates are staggered. There are currently approximately 11,000 permitted entities, with approximately 2,200 permit actions per year. However, not all of these entities will be affected by the revised permit fee schedule. The estimated number of impacted entities is as follows:

i. Businesses: 1,450 per year primarily through industrial permits, agriculture operations, non-public sanitary wastewater permits, and stormwater coverage issuances.
ii. Organizations: 10 per year primarily through individual sanitary permits issued to non-501(c)(3) organizations such as churches, summer camps, and private social or sporting clubs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will pay a fee for the review of surface water permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will vary depending on the type of permit each entity is seeking. The permits are effective for five years from issuance. Please see Attachment A for an illustration of permit fees by type.
Nonprofit entities and governments are not affected by this administrative regulation. The fee structure for a 501(c)(3) organization with a small treatment facility is established in KRS 224.16-050(5). KRS 224.10-100(20) prevents the collection of fees from public facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The current delay for processing a permit is largely a result of inadequate funding for the surface water permitting program. This backlog results in increased scrutiny by federal regulators for the regulated entities and the Division. An increase in resources for the Division will allow the division to be more responsive to permit applications. Kentucky’s fee structure will remain competitive for attracting industry. Fees for industry are still below those in most states, such as Illinois, Virginia, Ohio, and Indiana. Additionally, the fees imposed on small businesses and individuals will be comparable to those in surrounding states. Please see Attachments B, C, and D for a comparison of fee structures with surrounding states.

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

(a) Initially: No additional burden is anticipated. An existing mechanism is in place for collecting fees.

(b) On a continuing basis: No additional burden is anticipated. An existing mechanism is in place for collecting fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding will come from the fees generated by the permits.

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

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

(9) TIERING: Is tiering applied? Yes, tiering of fees is applied by this administrative regulation. This administrative regulation follows the tiering structure established in KRS 224.70-120 for individual permit fees. Additionally, the cabinet has tiered the permit fees association with Kentucky No-Discharge Operation Permits. Individual large animal feeding operation KDOP permits will have the same fee as an individual concentrated animal feeding operation KPDES permit ($1,200). The $1,200 fee is the same as the CAFO fee currently established by statute, and has not been adjusted for inflation. Medium animal feeding operation KDOP permits will have a significantly lower fee ($400) and small animal feeding operation KDOP permits will not be charged a fee ($0).

Attachment A: Explanation of Costs by Permit Type
Surface Water Permit Program Average Cost

<table>
<thead>
<tr>
<th>Average Administrative, Technical, &amp; Inspector Salary 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average salary, including fringe $53,793</td>
</tr>
<tr>
<td>Non-salary overhead = 15.6% $8,374</td>
</tr>
<tr>
<td>Total average salary with overhead, per year $62,167</td>
</tr>
<tr>
<td>Average cost per hour $31</td>
</tr>
</tbody>
</table>

TOTAL PROJECTED REVENUE: $1,646,000

Attachment B: NPDES General Permit 5-YR* Cost Comparison by State

<table>
<thead>
<tr>
<th></th>
<th>Single Family Residence</th>
<th>Coal Mining</th>
<th>Non-Coal Mining</th>
<th>Drinking Water Treatment Plant</th>
<th>Groundwater Remediation</th>
<th>Stormwater - Other</th>
<th>CAFO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kentucky Proposed</td>
<td>$0</td>
<td>$1,300</td>
<td>$1,200</td>
<td>$500</td>
<td>$600</td>
<td>$600</td>
<td>$600**</td>
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<tr>
<td>Kentucky Existing</td>
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<tr>
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<td>~</td>
<td>~</td>
<td>$1,675 - $5,725</td>
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<td>$250</td>
<td>~</td>
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<td>~</td>
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<tr>
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<td>$0</td>
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</table>

- 488 -
### VOLUME 36, NUMBER 2 – AUGUST 1, 2009

<table>
<thead>
<tr>
<th>State</th>
<th>Illinois</th>
<th>Indiana</th>
<th>Missouri</th>
<th>Ohio</th>
<th>Tennessee</th>
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<th>West Virginia</th>
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<tr>
<td></td>
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<td>$3,050</td>
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<td>$3,840 - $211,800</td>
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<td>$590 - $10,750</td>
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<td></td>
</tr>
</tbody>
</table>

*5-year comparison includes permit review, issuance, and annual maintenance fees based in comparison states. The fees in other states may be based on impacts, project size, or other factors. They are difficult to compare to Kentucky's flat-rate approach.

** No general permit is currently issued.

### Attachment C: NPDES Individual Permit Fee 5-YR* Comparison by State

<table>
<thead>
<tr>
<th>Category</th>
<th>Kentucky (current)</th>
<th>Kentucky (proposed)</th>
<th>Illinois</th>
<th>Indiana</th>
<th>Missouri</th>
<th>Ohio</th>
<th>Tennessee</th>
<th>Virginia</th>
<th>West Virginia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Industry</td>
<td>$3,200</td>
<td>$7,000</td>
<td>$12,500 - $290,000</td>
<td>$3,840 - $211,800</td>
<td>$20,000 - $30,000</td>
<td>$37,700 - $131,950</td>
<td>$3,000 - $45,000</td>
<td>$48,000</td>
<td>$500 - $5,000</td>
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<tr>
<td>Minor Industry</td>
<td>$2,100</td>
<td>$4,500</td>
<td>$5,000 - $250,000</td>
<td>$3,840 - $211,800</td>
<td>$19,000 - $21,000</td>
<td>$200 - $94,450</td>
<td>$3,000 - $45,000</td>
<td>$16,200 - $20,400</td>
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<td>Nonprocess Industry</td>
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<td>$8,100 - $14,100</td>
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<td>$100 - $2,250</td>
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<tr>
<td>Large, NPOTW</td>
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<td>$18,000 - $21,000</td>
<td>$200 - $311,450</td>
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<td>$15,000</td>
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<td>$2,100 - $70,500</td>
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<td>Small, NPOTW</td>
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<td>$2,500 - $250,000</td>
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<td>$750 - $1,500</td>
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<td>Agriculture</td>
<td>$1,200</td>
<td>$1,200</td>
<td>$0</td>
<td>$900</td>
<td>$30,000</td>
<td>$200</td>
<td>$1,500</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Surface mining operation</td>
<td>$1,200</td>
<td>$3,300</td>
<td>$25,000</td>
<td>$3,300</td>
<td>$5,000</td>
<td>$450</td>
<td>$3,250</td>
<td>$1,000 - $5,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>Publicly owned treatment works</td>
<td>$0</td>
<td>$0</td>
<td>$2,500 - $250,000</td>
<td>$1,700 - $141,000</td>
<td>$500 - $1,017,500</td>
<td>$200 - $311,450</td>
<td>$4,500 - $30,000</td>
<td>$9,500 - $28,000</td>
<td>$200 - $25,000</td>
</tr>
</tbody>
</table>

*5 year Comparison includes both issuance and annual fees.
The fees in other states may be based on impacts, project size, or other factors. They are difficult to compare to Kentucky's flat-rate approach.

### Attachment D: NPDES Stormwater Construction Fee

<table>
<thead>
<tr>
<th>State</th>
<th>$0</th>
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</thead>
<tbody>
<tr>
<td>Mississippi</td>
<td>$0</td>
</tr>
<tr>
<td>Missouri</td>
<td>$300</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$65 per acre</td>
</tr>
<tr>
<td>Ohio</td>
<td>$200 - $500, based on acreage</td>
</tr>
<tr>
<td>South Carolina</td>
<td>$125</td>
</tr>
<tr>
<td>Tennessee</td>
<td>$0 - $7,500, based on size</td>
</tr>
<tr>
<td>Virginia</td>
<td>$300 - $500, based on size</td>
</tr>
<tr>
<td>West Virginia</td>
<td>$300 - $1,750, based on flow</td>
</tr>
</tbody>
</table>

- 489 -
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 of a unit, or divisions of the state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does not establish a fee for state or local government or for political subdivisions. State government will experience an increase in agency restricted funding because of the fees established in 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 Chapter 224.10-230(3) permits the cabinet to amend, by administrative regulation, the discharge permit fees authorized by KRS Chapter 224.70-120. KRS 224.10-100(20) permits the cabinet to establish by administrative regulation, a schedule of fees for processing applications.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The average revenue generated by this administrative regulation would be $1.4 - $1.6 million for state government, based on the number of permit applications in 2007. The surface water permit program costs approximately $3.4 to $3.5 million per year and the current fees only generate $200,000 to $400,000 per year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The average revenue expected would be $1.4 - $1.6 million. This will vary based on the number and type of permits processed.
(c) How much will it cost to administer this program for the first year? This administrative regulation will not affect state expenditures because the program is already in place.
(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not impose additional costs because there are existing mechanisms to collect fees.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(New Administrative Regulation)

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications.

RELATES TO: KRS 223.160-220, 224.10-100, 224.10-110
STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 224.10-110 authorize the cabinet to promulgate administrative regulations concerning the certification of water operators. This administrative regulation establishes classification of water treatment and distribution operator certifications and establishes the qualifications for certification.

(a) Limited certification. As provided in KRS 223.160(2), an operator issued a limited certificate may have primary responsibility for a water treatment facility for a school and for a semipublic water supply (b) Class IA-D treatment certification.
1. A Class IA-D treatment operator may be in direct responsible charge for a water treatment plant with a design capacity less than 59,000 gallons per day and that treats surface water, groundwater under the direct influence of surface water or groundwater not under the direct influence of surface water that uses a component of conventional filtration treatment and is responsible for the distribution of treated water.
2. A Class IA-D treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.
(c) Class IA-D treatment certification with an operator in training designation. A Class IA-D treatment operator with an Operator in Training designation shall not be in direct responsible charge of any treatment plant.
(d) Class IB-D treatment certification.
1. A Class IB-D treatment operator may be in direct responsible charge for a water treatment plant with a design capacity less than 59,000 gallons per day and that treats groundwater not under the direct influence of surface water and does not employ any component of conventional filtration treatment and is responsible for distribution of treated water.
2. A Class IB-D treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.
(e) Class IB-D treatment certification with an operator in training designation. A Class IB-D treatment operator with an Operator in Training designation shall not be in direct responsible charge of any treatment plant.
(f) Class IIA treatment certification.
1. A Class IIA treatment operator may be in direct responsible charge for a water treatment plant with a design capacity of less than 500,000 gallons per day that treats surface water, groundwater under the direct influence of surface water, or groundwater not under the direct influence of surface water that uses a component of conventional filtration treatment.
2. A Class IIA treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.
(g) Class IIB-D treatment certification.
1. A Class IIB-D treatment operator may be in direct responsible charge for a water treatment plant with a design capacity of less than 500,000 gallons per day and that treats groundwater not under the direct influence of surface water and does not employ any component of conventional filtration treatment and is responsible for the distribution of treated water.
2. A Class IIB-D treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.
(h) Class IIIA treatment certification.
1. A Class IIIA treatment operator may be in direct responsible charge for a water treatment plant with a design capacity of less than 3,000,000 gallons of water per day and that treats surface water, or groundwater under the direct influence of surface water, or groundwater not under the direct influence of surface water that uses a component of conventional filtration treatment.
2. A Class IIIA treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.
(i) Class IIIB treatment certification.
1. A Class IIIB treatment operator may be in direct responsible charge for a water treatment plant with a design capacity of less than 3,000,000 gallons of water per day and that treats groundwater not under the direct influence of surface water and does not employ any component of conventional filtration treatment.
2. A Class IIIB treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.
(j) Class IVA treatment certification.
1. A Class IVA treatment operator may be in direct responsible charge of any water treatment plant that treats surface water, groundwater under the direct influence of surface water or groundwater not under the direct influence of surface water that uses a component of conventional filtration treatment.
(k) Class IVB treatment certification.
1. A Class IVB treatment operator may be in direct responsible charge of any water treatment plant that treats groundwater not under the direct influence of surface water and does not employ any component of conventional filtration treatment.

(2) Water distribution certifications.
(a) Class ID distribution certification.
1. A Class ID distribution operator may be in direct responsible charge for a water distribution system serving a population less than 1,500.
2. A Class ID distribution operator shall not be in direct responsible charge for a water distribution system serving a larger population.

(b) Class ID distribution certification with an operator in training designation. A Class ID distribution operator with an operator in training designation shall not be in direct responsible charge of any distribution system.

(c) Class IID distribution certification.
1. A Class IID distribution operator may be in direct responsible charge for a water distribution system serving a population less than 15,000.
2. A Class IID distribution operator shall not be in direct responsible charge for a water distribution system serving a larger population.

(d) Class IIID distribution certification.
1. A Class IIID distribution operator may be in direct responsible charge for a water distribution system serving a population less than 50,000.
2. A Class IIID distribution operator shall not be in direct responsible charge for a water distribution system serving a larger population.

(e) Class IVD distribution certification.
1. A Class IVD distribution operator may be in direct responsible charge of any water distribution system.

(f) Bottled water certification. A bottled water operator may be in direct responsible charge for a bottled water system that bottles water for sale.

Section 2. Water Operator Qualifications: Experience, Education, and Equivalencies. An individual desiring to become a certified operator shall meet the following minimum qualifications prior to the cabinet approving the individual to take a certification examination as provided in 401 KAR 11:050.

(1) The education and experience requirement for each class of water treatment certifications shall be as follows:

(a) Limited certification:
1. Education. A minimum level of education shall not be required.
2. Experience. A minimum level of experience shall not be required.

(b) Class IA-D treatment certification:
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. One (1) year of acceptable operation of a public water system with any design capacity and that treats surface water or groundwater not under the direct influence of surface water or groundwater not under the direct influence of surface water that uses a component of conventional filtration treatment and is responsible for the distribution of treated water shall be required.

(c) Class IA-D treatment certification with an Operator in Training designation:
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Experience shall not be required.

(d) Class IB-D treatment certification:
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. One (1) year of acceptable operation of a public water system with any design capacity shall be required.

(e) Class IB-D treatment certification with an Operator in Training designation:
1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Experience shall not be required.
distribution system shall be required. 
(b) Class ID distribution certification with an Operator in Training designation:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Experience shall not be required.

(c) Class III distribution certification:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Two (2) years of acceptable operation of a water distribution system shall be required.

a. Six (6) months of the required experience shall be in a water distribution system serving a population greater than or equal to 1,500.

(d) Class III distribution certification:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and
2. Experience. Three (3) years of acceptable operation of a water distribution system shall be required.

a. One (1) year of the required experience shall be in a water distribution system serving a population greater than or equal to 1,500.

(e) Class IV distribution certification:

1. Education. A baccalaureate degree in engineering, science, or equivalent shall be required; and
2. Experience. One (1) year of acceptable operation of a water distribution system serving a population greater than or equal to 15,000 shall be required.

(3) Bottled water certification. The educational and experience qualifications for bottled water certifications shall be as follows:

(a) Education. A High school diploma or general education development (GED) certificate shall be required; and
(b) Experience. One (1) year of acceptable operation of a bottled water system shall be required.

(4) Substitutions. The cabinet shall allow the following substitutions for the qualifications specified in subsections (1), (2), and (3) of this section:

(a) Education in environmental engineering; environmental technology; and, biological, physical, or chemical sciences shall be substituted if the substitution does not exceed fifty (50) percent of the required experience.
1. An associate degree shall be considered equivalent to two (2) years of experience.
2. A baccalaureate degree shall be considered equivalent to four (4) years of experience.
3. Education that did not result in a degree in a related field may be substituted for the required experience as follows:

(b) Experience applied to the experience requirements specified in subsections (1) and (2) of this section shall not be applied to the education requirement.

(b) Experience may be substituted for the educational requirement as follows:

1. One (1) year of operational experience at a water system may substitute for one (1) year of education.

2. The cabinet may allow partial substitution of the education requirement by experience in maintenance, laboratory analysis, or other work related to the collection, treatment, or distribution of drinking water or wastewater. To establish how much experience shall be accepted, the cabinet shall determine the degree of technical knowledge needed to perform the work and the degree of responsibility the applicant had in the operation of the system.

3. Experience used to the education requirement specified in subsections (1) and (2) of this section shall not be applied to the experience requirement.

(c) Water treatment and distribution experience may be substituted as follows:

1. Two (2) years of distribution system experience shall be considered equivalent to one (1) year of treatment experience.

2. One (1) year of treatment experience shall be considered equivalent to one (1) year of distribution system experience.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10 a.m. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 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: Julia Keys, Regulations Coordinator, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-0323, fax (502) 564-9720, email Julia.Keys@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the classification and qualifications of certified operators.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum qualifications for an individual before they can take a certification examination. It also defines the substitutions that may be used to meet the minimum qualifications for certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 223.160-220, 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators. This administrative regulation establishes standards for classification and qualification of certified 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 is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water treatment plant and distribution system operators will be affected by this new administrative regulation. There are approximately 2600 operators currently certified by the water operator certification program. State or local governments that operate water treatment plants or distribution systems will be indirectly affected by this new administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators, state and local governments, will refer to this new administrative regulation to determine the necessary education and experience requirements for each water treatment plant classification. No additional fees or funding will be required to implement this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this new administrative regulation, individuals should not expect to experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators, state and local governments, will gain a clear understanding of the classification and qualification requirements and as a result understand what experience and education must be obtained prior to becoming certified.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs are anticipated.
(b) On a continuing basis: No additional costs are anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this new administrative regulation is funded through agency and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No additional fees or funding will be required to implement this administrative regulation.

(8) Whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not directly or indirectly establish any fees.

(b) TIERING: Is tiering applied? Yes, tiering is applied. Different operator classifications require varying levels of education and experience for certification. These requirements are tiered based on the size of the treatment and collection processes.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This new administrative regulation relates to state or local governments that operate water treatment plants or distribution systems.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: Safe Drinking Water Act Title 42, Chapter 6A, Subchapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements; KRS 223.160-220, 224.10-110, 224.10-110, and 224.73-110.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will generate additional state or local government revenue. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.
(b) How much will it cost to administer this program for the first year? No additional cost is anticipated.
(c) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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

**ENERGY AND ENVIRONMENT CABINET**

**Department for Environmental Protection**

**Division for Air Quality**

(Repealer)


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60:670-6676, EO 2009-538

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7411, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet. The New Source Performance Standards for Nonmetallic Mineral Processing Plants, located at 40 C.F.R. Part 60, Subpart OOO, are being promulgated into 401 KAR 60 005; therefore, the repeal is necessary to make the state standard no less stringent than the recent revisions to 40 C.F.R. Part 60, Subpart OOO published in the April 28, 2009 Federal Register.

Section 1. 401 KAR 60:670 .40 C.F.R. Part 60 standards of performance for nonmetallic mineral processing plants, is hereby repealed.

HENRY C.A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 14, 2009

FILED WITH LRC: July 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this repeal will be held on August 26, 2009, at 10 a.m. (local time) in Conference Room 201B of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in
writing five (5) workdays prior to the hearing of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed repeal. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services, necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed repeal. Written comments will be accepted until close of business on August 31, 2009. Send written notification of intent to be heard at the hearing or written comments on the proposed repeal to the contact person.

CONTACT PERSON: Ty Martin, Environmental Technologist II, Division for Air Quality, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4656, and email ty.martin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ty Martin, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals duplicative standards of performance for Nonmetallic Mineral Processing Plants.

(b) The necessity of this administrative regulation: The New Source Performance Standards for Nonmetallic Mineral Processing Plants codified in 40 C.F.R. Part 60, Subpart OO. have been adopted in 401 KAR 60:005. Repeal of 401 KAR 60:670 will eliminate competing requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the Environmental Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: With the repeal of 401 KAR 60:670 and addition of the 40 C.F.R. Part 60, Subpart OO. to the standards adopted in 401 KAR 60:005, the Cabinet will not have to restate the standards for nonmetallic mineral processing plants every time U.S. EPA promulgates new standards for Subpart OO.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.

(b) The necessity of the amendment: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sources subject to 40 C.F.R. Part 60, Subpart OO. will now be regulated by 401 KAR 60 005. The Cabinet will remain the enforcement agency for these standards.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new requirements associated with the repeal of 401 KAR 60:670.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs associated with the repeal of 401 KAR 60:670.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to 40 C.F.R. Part 60, Subpart OO. will continue to work with the Commonwealth rather than the federal government. The Cabinet will no longer have to amend 401 KAR 60:670 on a routine basis in order to retain delegation of authority.

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

(a) Initially: The division will not incur any additional costs for the repeal of this administrative regulation.

(b) On a continuing basis: There will be no additional continuing costs for the repeal of this administrative regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet will implement this program. Sources subject to 40 C.F.R. Part 60, Subpart OO may be operated by state or local governments. Like their non-governmental counterparts, these sources are also required to comply with this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation: KRS 224.10-100(5), 42 U.S.C. 7411.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed repeal will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs will be included in the Cabinet's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Cabinet's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanations: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Kentucky State Police
Operations Division
(New Administrative Regulation)


RELATES TO: KRS 218A.1431, 224.01-410, 224.99-010
STATUTORY AUTHORITY: KRS 15.080, 224.01-410
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-
410 requires the Department of Kentucky State Police to promulgate administrative regulations establishing a method for assessing properties where an officer has evidence that methamphetamine has been manufactured in the property. This administrative regulation establishes the method by which the Kentucky State Police shall notify the Energy and Environment Cabinet and the Cabinet for Health and Family Services that a property contains potentially hazardous material resulting from the manufacture of methamphetamine.

Section 1. Reporting. Officers conducting a criminal investigation occurring at a property in which a suspect has manufactured methamphetamine shall complete and submit the Energy and Environment Cabinet's Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria form DEP 1016 DEP 1016, incorporated by reference in 401 KAR 101:030.

(1) This form shall not be part of the officer's criminal investigation file and is not a Department of Kentucky State Police form.

(2) Neither the form nor information derived solely from the form shall be used for investigative purposes.

Section 2. Distribution. Officers shall copy Energy and Environment Cabinet's Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria form DEP 1016, incorporated by reference in 401 KAR 101:030, and provide a copy to the Local Health Department, the Energy and Environment Cabinet, and the Department of Public Health.

RODNEY BREWER, COMMISSIONER
APPROVED BY AGENCY: July 15, 2009
FILED WITH LRC: July 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009, at 1 p.m. at the Kentucky State Police Headquarters, 919 Versailles Rd., Frankfort, Kentucky. Individuals interested in attending the hearing shall notify the agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1536.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Perkins

(1) Provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statute: N/A
(d) How the amendment will assist in the effective administration of the statute: N/A

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

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

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

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

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Repealer)

701 KAR 5:035. Repeat of 701 KAR 5:035.

RELATES TO: KRS 61.876
STATUTORY AUTHORITY: KRS 61.876, 156.070
NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 701 KAR 5:035, Procedures for records requests. This administrative regulation is no longer required because the Finance and Administration Cabinet is authorized by KRS 61.876(3) to promulgate uniform rules governing public access to public records maintained by administrative agencies of the state government. The Finance Cabinet has established 200 KAR 1:020 which sets out the general rules to be followed by all state administrative agencies in affording public access to their records and by persons applying to inspect such records. The Office of Attorney General has advised the Finance Cabinet's regulation is sufficient for and designed for use by all state agencies, thus removing the need for each agency to have separate and individual regulations governing record requests. If this regulation remained and/or was amended, the regulation would be superfluous and could create ambiguity since 200 KAR 1.020 is firmly established and designed to meet the record keeping requirements for all agencies.

Section 1. 701 KAR 5:035, Procedures for records requests, 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).

KEVIN M. NOLAND, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED BY AGENCY: June 15, 2009
FILED WITH LRC: June 17, 2009 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 2009, at 10 a.m. in the 1st Floor Conference Room, 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 August 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, 600 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 repeals 701 KAR 5:035 which is the regulation governing specific record requests to the Department and Kentucky Board of Education. Upon advice of the Attorney General, agencies may rely upon the Finance and Administration Cabinet's regulation, 200 KAR 1:020, governing record requests to state agencies instead of maintaining a separate and duplicative regulation specific to each agency.
(b) The necessity of this administrative regulation: This regulation is necessary to repeal the regulation governing record requests which is required by a policy decision of the Department and the Board to rely upon the Finance Cabinet's record request regulation.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation repeals a regulation no longer required due to the provisions of 200 KAR 1:020.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will provide greater clarity to the record request process, eliminate duplicative regulations and reduce the possibility of conflicting regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. This regulation will repeal a current regulation.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation repeals a regulation no longer required due to the provisions of 200 KAR 1:020 and as recommended by the Attorney General.
(c) How the amendment conforms to the content of the authorizing statute: The regulation repeals a regulation no longer required due to the provisions of 200 KAR 1:020.
(d) How the amendment will assist in the effective administration of the statutes: The repeal of this administrative regulation will provide greater clarity to the record request process, eliminate duplicative regulations and reduce the possibility of conflicting regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses and organizations seeking to request records from the department or the Kentucky Board of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The repeal of this regulation will not change the record request process followed by the department/KBE and will defer to the Finance Cabinet's regulation governing record requests to state agencies.

(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): No additional costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of this administrative regulation will provide greater clarity to the record request process, eliminate duplicative regulations and reduce the possibility of conflicting regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No 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.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all.

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 and the Department of Education

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 51.076, 156.070, 200 KAR 1:020

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
(New Administrative Regulation)

702 KAR 7:140. School district calendar.

RELATES TO. KRS 159.060, 159.070

STATUTORY AUTHORITY. KRS 159.060, 159.070

NECESSITY, FUNCTION, AND CONFORMITY. KRS 159.060 defines the school day and month and makeup of school days missed. KRS 159.070 defines the school term.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:

(a) Establish the opening and closing dates of the school term;

(b) Establish beginning and ending dates of each school month;

(c) State the number of days of instruction;

(d) Establish the minimum length of the instructional day;

(e) State the instructional time the local board of education requires for kindergarten if in excess of the minimum three (3) hours of instruction;

(f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency, and

(g) Designate days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the makeup of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed statewide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

(6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

Section 2. (1) The local board of education shall file each adopted school calendar with the Department of Education no later than the 30th of each June. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year that do not have to be made up, and that occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except as provided in subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(2) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. A local board of education may request disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school days:

(a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district
program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:005;

(c) Co-curricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational

al schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying curricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

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).

KEVIN M. NOLAND, Interim Commissioner
JOSEPH BROTHERS, Chairperson
APPROVED AGENCY: June 15, 2009
FILED WITH LRC: June 17, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 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 August 31, 2009. Sand 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, Bu-reaux of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown
(1) Provide a brief summary of

(a) What this administrative regulation does: The school calendar regulation establishes the requirements for opening and closing days of school, instructional days, holidays, professional development days and states the amount of instructional time offered each day. The regulation requires submission of amended school calendars from local boards of education to the Kentucky Department of Education no later than June 30 of each year.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 158.060 and 158.070 that set forth the requirements for school calendars to be used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for school calendars required in KRS 158.060 and 158.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation provides specifics regarding how school calen-
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 158.060 and 158.070.

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

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:570. Minimum standards for Medicare supplement insurance policies and certificates.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.32-250, 304.38-150, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

Section 1. Definitions. (1) "Applicant" is defined by KRS 304.14-500(1).

(2) "Bankruptcy" means a petition for declaration of bankruptcy filed or filed against a Medicare Advantage organization that is not an insurer and has ceased doing business in the state.

(3) "Certificate" is defined by KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Commissioner" means Commissioner of Insurance.

(6) "Compensation" means monetary or non-monetary remuneration of any kind relating to the sale or renewal of the policy or certificate including bonuses, gifts, prizes, awards, and finder's fees.

(7) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select Insurer or its network providers.

(8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(9) "Creditable coverage" is defined by KRS 304.17A-005(8).

(10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 of the Employee Retirement Income Security Act.

(11) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(12) "Genetic Information" means except for information relating to the sex or age:

(a) With respect to any individual:

   (1) Information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual; or

   (2) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

(b) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman includes genetic information of any fetus carried by a pregnant woman, or with respect to an individual or family member utilizing reproductive technologies, includes genetic information of any embryo legally held by an individual or family member.

(13) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(14) "Genetic test":

(a) Means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes;

(b) Does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a medical disorder, disease, disability, or abnormal condition that may reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(15) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select Insurer or its network providers.

(16) "Health care expenses" shall be defined as expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(17) "Insolvency" is defined by KRS 304.33-030(18).

(18) "Insurer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(19) "Insurer of a Medicare supplement policy or certificate" means an insurer or third-party administrator, or other person acting for or on behalf of the insurer.

(20) "Medicare" is defined by KRS 304.14-500(4).

(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28b(1), and includes:

   (a) A coordinated care plans, which provide health care services, including the following:

   1. A health maintenance organization plan, with or without a point-of-service option;

- 499 -
2. A plan offered by provider-sponsored organization; and
3. A preferred provider organization plan;
(b) A medical savings account plan coupled with a contribution into a Medicare Advantage plan medical savings account; and
(c) A Medicare Advantage private fee-for-service plan.

(22) "Medicare Select insurer" means an insurer offering, or seeking to offer, a Medicare Select policy or certificate.

(23) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(24) "Medicare supplement policy" is defined by KRS 304.14-500(3).

(25) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the insurer to provide benefits insured under a Medicare Select policy.

(26) "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy or group of Medicare supplement insurance issued prior to January 1, 1992.

(27) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(28) "Service area" means the geographic area approved by the commissioner within which an insurer is authorized to offer a Medicare Select policy.

(29) "Structure, language, and format" means style, arrangement and overall content of a benefit.

(30) "Underwriting purposes" means,
(a) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;
(b) The computation of premium or contribution amounts under the policy;
(c) The application of any pre-existing condition exclusion under the policy; and
(d) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(31) "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after January 1, 1992, and prior to June 1, 2010, and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the Insurer at the request of the insured.

(32) "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued on or after June 1, 2010.

(33) "Policy form" means the form on which the policy is delivered or issued for delivery by the insurer.

(34) "Secretary" means the Secretary of the United States Department of Health and Human Services.

Section 2. Table of Contents

Section 1. Definitions
Section 2. Table of Contents
Section 3. Purpose
Section 4. Applicability and Scope
Section 5. Policy Definitions and Terms
Section 7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992
Section 8. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery After January 1, 1992, and Prior to June 1, 2010
Section 8.1 Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After January 1, 1992, and Prior to June 1, 2010

Section 9.1 Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After June 1, 2010.
Section 10. Medicare Select Policies and Certificates
Section 11. Open Enrollment
Section 12. Guaranteed Issue for Eligible Persons
Section 13. Standards for Claims Payment
Section 14. Loss Ratio Standards and Refund or Credit of Premium
Section 15. Filing and Approval of Policies and Certificates and Premium Rates
Section 16. Permitted Compensation Arrangements
Section 17. Required Disclosure Provisions
Section 18. Requirements for Application Forms and Replacement Coverage
Section 19. Filing Requirements for Advertising
Section 20. Standards for Marketing
Section 21. Appropriateness of Recommended Purchase and Excessive Insurance
Section 22. Reporting of Multiple Policies
Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates
Section 24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing
Section 25. Incorporation by Reference

Section 3. Purpose. The purpose of this administrative regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of the policies; to eliminate provisions contained in the policies which may be misleading or confusing in connection with the purchase of the policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness Insurance coverage to persons eligible for Medicare.

Section 4. Applicability and Scope. (1) Except as provided in Sections 7, 13, 14, 17 and 22, the requirements of this administrative regulation shall apply to:
(a) All Medicare supplement policies delivered or issued for delivery in Kentucky on or after the effective date of this administrative regulation; and
(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in Kentucky.

(2) This administrative regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 5. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any
workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless the definition is prohibited by law.

(2) "Activities of daily living" include bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(3) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one visit.

(4) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(5) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(6) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(7) "Emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(8) "Home" shall mean any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(9) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(10) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutions thereof," or words of similar import.

(11) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(12) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(13) "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(14) "Sickness" shall not be defined more restrictively than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

Section 6. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 7(2)(a), Section 8(1)(a), and Section 8.1(1)(d) of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy or certificate shall not:

(a) Contain a probationary or elimination period; or

(b) Use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) A Medicare supplement policy or certificate in force in the state shall not contain benefits that duplicate benefits provided by Medicare.

(4) (a) Subject to Sections 7(2)(d), (e) and (g), and 8(1)(d) and (e) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan and;

2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992.

(1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards, which shall not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(2) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than section 5(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A "non-cancelable," "guaranteed renewable," or "non-cancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage under the insured's Medicare coverage or the nonpayment of premium or

2. Be cancelled or non-renewed by the insurer solely on the grounds of deterioration of health.

(e) Except as authorized by the commissioner, an insurer shall neither cancel or non-renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(3) If a Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (e) of this subsection, the insurer shall offer certificate holders an individual Medicare supplement policy with at least the following choices:

a. An Individual Medicare supplement policy currently offered by the insurer having comparable benefits to those contained in the terminated group Medicare supplement policy and

b. An Individual Medicare supplement policy which provides the benefits as are required to meet the minimum standards as defined in Section 8.1(2) of this administrative regulation.

3. If membership in a group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in Subparagraph 2 of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination, and coverage under the new group policy shall not
result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(3) Minimum Benefit Standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B;

(f) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare Part B deductible amount.

Section 6. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan and Policies or Certificates Issued on or Delivered on or After January 1, 1992, and Prior to June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992, and prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a pre-existing condition and the policy or certificate shall not define a pre-existing condition more restrictively than section 5(13).

(b) A Medicare supplement policy or certificate shall not:

1. Contain a probationary or elimination period;

2. Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that amounts designated to cover costs not covered under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable.

1. The insurer shall not cancel or non-renew the policy solely on the ground of health status of the individual.

2. The insurer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 8(1)(e)3 of this section, the insurer shall offer certificate holders an option to choose an individual Medicare supplement policy which:

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits that meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:

a. Offer the certificate holder the conversion opportunity described in Subsection 8(1)(e)3 of this section, or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the new group policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for a period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b) and is covered under a group health plan as defined in Section 1852 (b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395Y(b)(1)(A)(v).

If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of cover-
age, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstatement of coverages as described in Subparagraphs 2 and 3:
   a. Shall not provide for any awaiting period with respect to treatment of preexisting conditions;
   b. Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplementary policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part B enrollees shall be without coverage for outpatient prescription drugs and shall provide substantially equivalent coverage to the coverage in effect before the date of suspension; and
   c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

5. If an insurer makes a written offer to the Medicare Supplemental policyholder or certificate holder of one or more of its plans, to exchange during a specified period from his or her 1990 Standardized plan, as described in Section 9 of this administrative regulation, to a 2010 Standardized plan, as described in Section 9.1 of this administrative regulation, the offer and subsequent exchange shall comply with the following requirements:
   a. An insurer shall not provide just in time to the commissioner if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate schedule, of the insured. The method proposed to be used by an insurer shall be filed with the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:007;
   b. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

3. An insurer may not apply new pre-existing condition limitations or a new Incontiguity period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the Insured, but may apply pre-existing condition limitations of no more than six (6) months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

4. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

5. An insurer may offer its policyholders or certificate holders the following exchange options:
   a. Selected existing Plans; or
   b. Certain new Plans for a particular existing Plan.

2. Standards for Basic (Core) Benefits Common to Benefit Plans A to J. Every insurer shall make available a policy or certificate including at a minimum the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplemental Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.
   a. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 91st day through the 90th day in any Medicare benefit period;
   b. Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
   c. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses, coverage of hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
   d. Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and
   e. Coverage for the coinsurance amount or for hospital outpatient department services paid under a prospective payment system or for the inpatient payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;
   f. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this administrative regulation:
      a. Medicare Part A Deductible, which is coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
      b. Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.
      c. Medicare Part B Deductible, which is coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
   g. Eighty (80) Percent of the Medicare Part B Excess Charges, which is coverage for eighty (80) percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.
   h. Ninety (90) Percent of the Medicare Part B Excess Charges, which is coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
   i. Basic Outpatient Prescription Drug Benefit which is coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.
   j. Extended Outpatient Prescription Drug Benefit, which is coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.
   k. Medically Necessary Emergency Care in a Foreign Country which is coverage for amount not covered by Medicare for eighty (80) percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000.

1. Preventive Medical Care Benefit, which is coverage for the following preventive health services not covered by Medicare:
   a. An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph 2 of this paragraph and patient education to address preventive health care measures;
   b. Preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

2. Reimbursement shall be for the actual charges up to 100 percent of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) code, and a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

7. At-Home Recovery Benefit, which is coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.
   a. Coverage Requirements and Limitations.
a. At-home recovery services provided shall be primarily services which assist in activities of daily living.
b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
c. Coverage is limited to:
   (i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;
   (ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit;
   (iii) $1,600 per calendar year;
   (iv) Seven (7) visits in any one (1) week;
   (v) Care furnished on a visiting basis in the insured's home;
   (vi) Services provided by a care provider;
   (vii) At-home recovery visits received during the period the insured is receiving Medicare-approved home health care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.
3. Coverage is excluded for:
   a. Home care visits paid for by Medicare or other government programs;
   b. Care provided by family members, unpaid volunteers, or providers who are not care providers.
4. Standards for Plans K and L
   (a) Standardized Medicare supplement benefit plan "K" shall consist of the following:
      1. Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;
      2. Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;
      3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other applicable Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
      4. Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
      5. Skilled Nursing Facility Care, which is coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
      6. Hospice Care, which is coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
   7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2)), unless replaced in accordance with 42 C.F.R. 409.87(c)(2), until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
   8. Except for coverage provided in Subparagraph 9 of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph 10 of this paragraph;
   9. Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and
   10. Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary.
(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:
   1. The benefits described in Paragraphs (a)1, 2, 3, and 9;
   2. The benefit described in Paragraphs (a)4, 5, 6, 7, and 8, but substituting seventy-five (75) percent for fifty (50) percent; and
   3. The benefit described in Paragraph (a)10, but substituting $2000 for $4000.

Section 8.1. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards. An Insurer shall not offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Sections 8 and 9 of this administrative regulation.

(1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.
   (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition.
   (b) A Medicare supplement policy or certificate shall not indicate coverage against losses resulting from sickness on a different basis than losses resulting from accidents.
   (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with changes.
   (d) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence specified for termination of coverage of the insured, other than the nonpayment of premium.
   (e) Each Medicare supplement policy shall be guaranteed renewable.
   (f) The insurer shall not cancel or non-renew the policy solely on the ground of health status of the individual.
   2. The insurer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation.
   3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 8.1(1)(e)(5) of this section, the Insurer shall offer certificate holders an individual Medicare supplement policy which, at the option of the certificate holder:
      a. Provides for continuation of the benefits contained in the group policy; or
      b. Provides for benefits that meet the requirements of this subsection.
   4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the Insurer shall:
      a. Offer the certificate holder the conversion opportunity described in Subsection 8.1(1)(e)(5) of this Section; or
      b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
   5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the Insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered
under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be continued up to a total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) 1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. $1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the date of termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5)(A), at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1852 (b) (4) (A) (v) of the Social Security Act, 42 U.S.C. 1395Y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstatement of coverages as described in Subparagraphs 2 and 3 of this paragraph shall:

a. Not provide for any waiting period with respect to treatment of preexisting conditions;

b. Provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

c. Provide for continuation of the basic core benefits that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, High Deductible F, G, M and N. Every insurer of Medicare supplement insurance benefit plans shall make available a policy or certificate including, at a minimum, the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2);

(e) Coverage for the coinsurance amount, or for hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(f) Hospice Care, which is coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, High Deductible F, G, M, and N as provided by Section 9.1 of this Administrative Regulation.

(a) Medicare Part A Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B Excess Charges, which is coverage for the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000.


(1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing each of the basic core benefits, as defined in Section 8(2) of this administrative regulation.

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in Kentucky, except as may be permitted in Subsection 9(7) and in Section 10 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this section and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8(2) and 8(3), or 8(4) and list the benefits in the order shown in this section.

(4) An insurer may use, in addition to the benefit plan designations required in Subsection 3 of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as described in Section 8(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible as described in Section 8(3)(a).

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible
and medically necessary emergency care in a foreign country as described in Sections 8(3)(a), (b), (c), (d) and (h) respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: The core benefit, as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as described in Sections 8(3)(a), (b), (c), (e), (g), (h), and (j) respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as described in Section 8(3)(a), (b), (c), (d), (e), (g), and (j) respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (b), (c), (e), (g), and (h) respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses include the core benefits as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (b), (c), (e), (g), and (h) respectively.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as described in Section 8(3)(a), (b), (d), (h), and (j) respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: The core benefits as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (b), (f), (h), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as described in Section 8(3)(a), (b), (c), (e), (g), (h), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: The core benefit as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 8(3)(a), (b), (c), (e), (g), (h), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses include the core benefits as described in Section 8(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as described in Section 8(3)(a), (b), (c), (e), (g), (h), and (j) respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "J" deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.


(b) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 8(4)(b).

(7) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate compliant with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 9.1 Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After June 1, 2010. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, sold, delivered or issued in compliance with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

(1)(a) An insurer may make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as described in Section 8.1(2) of this administrative regulation.

(b) If an insurer makes available any of the additional benefits described in Section 8.1(3), or offers standardized benefit Plans K or L, as described in Sections 8.1(5)(h) and (i) of this administrative regulation, then the insurer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subsection (1) of this section, a policy form or certificate form containing either standardized benefit Plan C, as described in Section 8.1(5)(c) of this administrative regulation, or standardized benefit Plan F, as described in Section 8.1(5)(e) of this regulation.

(2) Group, packages or combinations of Medicare supplement benefits other than those listed in this Section shall not be offered for sale in this state, except as may be permitted in Section 9.1(6) and in Section 10 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, design and format to the standard benefit plans listed in this section.
Subsection and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Sections 8.1(2) and 8.1(3) of this administrative regulation; or, in the case of plans K or L, in Sections 9.1(5)(h) or (l) of this administrative regulation and list the benefits of the on the form shown.

(4) In addition to the benefit plan designations required in Subsection (3) of this section, an insurer may use other designations if approved by the commissioner.

(5) 2010 Standardized Benefit Plans:
(a) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefit as described in Section 8.1(2) of this administrative regulation.
(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible as described in Section 8.1(3)(a) of this administrative regulation.
(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), and (f) of this administrative regulation, respectively.
(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, and medically necessary emergency care in an foreign country as described in Sections 8.1(3)(a), (c), and (f) of this administrative regulation, respectively.
(e) Standardized Medicare supplement Plan F shall include only the following: The basic (core) benefit as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), and (f) of this administrative regulation, respectively.
(f) The annual deductible in High Deductible Plan F shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in Paragraph (f) of this subsection.
1. The basic (core) benefit as described in Section 8.1(2) of this administrative regulation, plus 100 percent of the Medicare Part B deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), and (f) of this administrative regulation, respectively.
2. The annual deductible in High Deductible Plan F shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.
3. The benefit described in subparagraphs 9.1(5)(h)4, 5, 6, 7, and 8, but substituting seventy-five (75) percent for fifty (50) percent; and
4. The benefit described in subparagraph 9.1(5)(h)10, but substituting $2000 for $4000.

(j) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as described in Section 8.1(2) of this administrative regulation, plus fifty (50) percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(b), (c), and (f) of this administrative regulation, respectively.
(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as described in Section 8.1(2) of this administrative regulation, plus hundred percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Sections 8.1(3)(a), (c), (d), and (f) of this administrative regulation, respectively, with co-payments in the following amounts:
1. The lesser of twenty (20) dollars or the Medicare Part B coinsurance or co-payment for each covered health care provider office visit, including visits to medical specialists; and
2. The lesser of fifty (50) dollars or the Medicare Part B coinsurance or co-payment for each covered emergency room visit; however, this co-payment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits. In addition to the standardized benefits provided in a policy or certificate that complies with the applicable standards of this section. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, and are not available, and are cost-effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Section 10. Medicare Select Policies and Certificates.

(1)(a) This section shall apply to Medicare Select policies and certificates, as described in this section.

(b) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The commissioner may authorize an insurer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4258 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, 42 U.S.C. 1395ss and 42 U.S.C. 1320c-9, if the commissioner finds that the insurer has satisfied all of the requirements of this regulation.

(3) A Medicare Select insurer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(4) A Medicare Select insurer shall file a proposed plan of operation with the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services may be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall not be more than sixty (60) miles from the insured’s place of residence.

2. The number of network providers in the service area is sufficient, with respect to current and expected policymakers, either:

a. To deliver and adequately and all services that are subject to a restricted network provision;

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. If covered services are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the insurer to comply with Subsection (8) of this section.

(g) Any other information requested by the commissioner.

(5) (a) A Medicare Select Insurer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after sixty (60) days unless specifically disapproved.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition;

(b) It is not reasonable to obtain services through a network provider; or

(c) There are no network providers available within sixty (60) miles of the insured’s place of residence.

(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) A Medicare Select Insurer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the insurer; and

2. Other Medicare Select policies or certificates.

(b) A description, which shall include address, phone number and hours of operation of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.

(d) A description of coverage for emergency and urgent needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder’s rights to purchase any other Medicare supplement policy or certificate offered by the insurer.

(g) A description of the Medicare Select Insurer’s quality assurance program and grievance procedure.

(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select Insurer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection (8) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) A Medicare Select Insurer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) Upon issuance of the policy or certificate, the insurer shall provide detailed information to the policyholder describing how a grievance may be registered with the insurer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The insurer shall report no later than each March 31st to the
commissioner regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature and resolution of grievances.

(11) Upon initial purchase, a Medicare Select insurer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer.

(12)(a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select Insurer shall make available to the individual the opportunity to purchase a Medicare supplement policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The insurer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:
1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section shall be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select Insurer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The insurer shall make these policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:
1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(14) A Medicare Select Insurer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 11. Open Enrollment.

(1)(a) An Insurer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:
1. An application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is sixty-five (65) years of age or older; and
2. The applicant is enrolled for benefits under Medicare Part B.

(b) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(c) If an applicant qualifies under Subsection (1) of this section and submits an application during the time period referenced in Subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the insurer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under Subsection (1) of this section and submits an application during the time period referenced in Subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the insurer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

(3) Except as provided in Subsection (2) and Sections 12 and 23 of this administrative regulation, Subsection (1) of this Section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was diagnosed during the six (6) months before the coverage became effective.

Section 12. Guaranteed Issue for Eligible Persons

(1) Guaranteed Issue:

(a) Eligible persons are those individuals described in Subsection (2) of this section who seek to enroll under the policy during the period specified in Subsection (3) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an insurer shall not:
1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection (5) of this section that is offered and is available for issuance to new enrollees by the insurer.
2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and
3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all the supplemental health benefits to the individual;
(b) An individual enrolled under Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare;
1. The individual is sixty (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee, and there are circumstances similar to those described in subparagraph 2 that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan; or
2. Any of the following circumstances apply:
   a. The certification of the organization or plan has been terminated,
   b. The organization has terminated or discontinued providing the plan in the area in which the individual resides;
   c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, 42 U.S.C. 1395w-21(g)(3)(B), if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, 42 U.S.C. 1395w-28, or the plan is terminated for all individuals within a residence area;
   d. The individual demonstrates, in accordance with guidelines established by the Secretary, that:
      (i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards; or
      (ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or
      (iii) The Individual meets the other exceptional conditions as the Secretary may provide.
(c) 1. An individual is enrolled with:
   a. An eligible organization under a contract under Section 1876
      of the Social Security Act, 42 U.S.C. 1395nnm regarding Medicare
      cost;
   b. A similar organization operating under demonstration project
      authorized to be effective for periods before April 1, 1999;
   c. An organization under an agreement under Section 1833(a)(1)(A)
      of the Social Security Act, 42 U.S.C. 1395z(v)(1)(A), regarding health
      care prepayment plan; or
   d. An organization under a Medicare Select policy; and
   2. The enrollment ceases under the same circumstances that
      would permit discontinuance of an individual's election of coverage
      under subsection (3)(b) of this section.
   (d) The individual is enrolled under a Medicare supplement
      policy and the enrollment ceases due to any of the following reasons:
      1a. The insolvency of the insurer or bankruptcy of the non-
      insurer organization; or
      b. The involuntary termination of coverage or enrollment under
      the policy;
      2. The insurer, or an agent or other entity acting on the insurer's
      behalf, materially misrepresented the policy's provisions in
      marketing the policy to the individual;
      (e) 1. An individual that was enrolled under a Medicare supple-
      ment policy and terminates enrollment and subsequently enrolls,
      for the first time, with any of the following:
      a. A Medicare Advantage organization under a Medicare Ad-
         vantage plan under part C of Medicare;
      b. An eligible organization under a contract under Section 1876
         of the Social Security Act, 42 U.S.C. 1395nnm regarding Medicare
         cost;
      c. A similar organization operating under demonstration project
         authority;
      d. A PACE provider under Section 1994 of the Social Security
         Act, 42 U.S.C. 1395ee;
      e. A Medicare Select policy; and
      2. The subsequent enrollment under subparagraph (e)1 of this
      subsection is terminated by the enrollee during any period within
      the first twelve (12) months of subsequent enrollment during which
      the enrollee is permitted to terminate the subsequent enrollment
      under Section 1851(e) of the federal Social Security Act, 42 U.S.C.
      1395w-21(e); or
      (f) An individual who, upon first becoming eligible for benefits
      under part A of Medicare at age 65, enrolls in:
      1. A Medicare Advantage plan under part C of Medicare, or
      with a PACE provider under Section 1994 of the Social Security
      Act, 42 U.S.C. 1395ee; and
      2. Disenrolls from the plan or program by not later than twelve
      (12) months after the effective date of enrollment; or
      (g) An individual that:
      1. Enrolls in a Medicare Part D plan during the initial enrollment
      period;
      2. Upon enrollment in Part D, was enrolled under a Medicare
      supplement policy that covers outpatient prescription drugs; and
      3. Terminates enrollment in the Medicare supplement policy
      and submits evidence of enrollment in Medicare Part D along with
      the application for a policy described in Subsection (5)(d) of this
      section.
   (3) Guaranteed Issue Time Periods.
     (a) For an individual described in Subsection (2)(a) of this section,
     the guaranteed issue period shall:
     1. Begin on the later of the date:
        a. The individual receives a notice of termination or cessation
           of all supplemental health benefits, or, if a notice is not received,
           notice that a claim has been denied because of a termination or
           cessation; or
        b. That the applicable coverage terminates or ceases; and
        2. End sixty-three (63) days thereafter;
     (b) For an individual described in Subsection (2)(b), (c), (e) or
     (f) of this section whose enrollment is terminated involuntarily, the
     guaranteed issue period begins on the date that the individual
     receives a notice of termination and ends sixty-three (63) days
     after the date the applicable coverage is terminated;
     (c) For an individual described in Subsection (2)(d)1 of this
     section, the guaranteed issue period shall end on the date that is
     sixty-three (63) days after the date the coverage is terminated
     and shall begin on the earlier of the date that:
     1. The individual receives a notice of termination, a notice of
        the Insurer's bankruptcy or insolvency, or other the similar notice if
        any, or
     2. The applicable coverage is terminated;
     (d) For an individual described in Subsection (2)(b), (d), (e) or
     (f) of this section who enrolls voluntarily, the guaranteed
     issue period shall begin on the date that is sixty (60) days before
     the effective date of the disenrollment and shall end on the date
     that is sixty-three (63) days after the effective date;
     (e) For an individual described in Subsection (2)(g) of this
     section, the guaranteed issue period shall begin on the date the indi-
     vidual receives notice pursuant to Section 1852(v)(2)(B) of the
     Social Security Act, 42 U.S.C. 1395ee(v)(2)(B), from the Medicare
     supplement insurer during the sixty-day period immediately pre-
     ceding the initial Part D enrollment period and shall end on the
     date that is sixty-three (63) days after the effective date of the indi-
     vidual's coverage under Medicare Part D; and
     (f) For an individual described in Subsection (2) of this section
     but not described in the preceding provision of this Subsection,
     the guaranteed issue period shall begin on the effective date of
     disenrollment and shall end on the date that is sixty-three (63) days
     after the effective date.
   (4) Extended Medgap Access for Interrupted Trial Periods.
     (a) For an individual described in Subsection (2)(e) of this section
     whose enrollment with an organization or provider described in
     Subsection (2)(e)1 of this section is involuntarily terminated within
     the first twelve (12) months of enrollment, and who, without an
     intervening enrollment, enrolls with another organization or pro-
     vider, the subsequent enrollment shall be deemed to be an initial
     enrollment described in subsection (2)(e)1 of this section;
     (b) For an individual described in Subsection (2)(f) of this section
     whose enrollment with a plan or in a program described in
     Subsection (2)(f) of this section is involuntarily terminated within
     the first twelve (12) months of enrollment, and who, without an
     intervening enrollment, enrolls in another plan or program, the
     subsequent enrollment shall be deemed to be an initial enrollment
     described in subsection (2)(f) of this section; and
     (c) For purposes of Subsections (2)(e) and (f) of this section,
     enrollment of an individual with an organization or provider
     described in Subsection (2)(e)1 of this section, or with a plan or in
     a program described in Subsection (2)(f) of this section, shall not be
     deemed to be an initial enrollment under this paragraph after the
     two-year period beginning with the individual first enrolled with an
     organization, provider, plan, or program.
   (5) Products to Which Eligible Persons are Entitled. Medi-
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

deductible F, K, or L; and

2. Is offered and available for issuance to new enrollees by the
same insurer that issued the individual’s Medicare supplement
policy with outpatient prescription drug coverage.

(5) Notification provisions.

(a) Upon an event described in Subsection (2) of this section
resulting in a loss of coverage or benefits due to the termination
of a contract or agreement, policy, or plan, the organization that
terminates the contract or agreement, the insurer terminating the
policy, or the administrator of the plan being terminated, respec-
tively, shall notify the individual of the individual’s rights under
this section, and of the obligations of insurers of Medicare supplement
policies under Section 12(1) of this section. This notice shall be
communicated simultaneously with the notification of termination.
(b) Upon an event described in Subsection (2) of this section
resulting in an individual ceasing enrollment under a contract or
agreement, policy, or plan, the organization that offers the contract
or agreement, regardless of the basis for the cessation of enrol-
ment, the insurer offering the policy, or the administrator of the
plan, respectively, shall notify the individual of the individual’s
rights under this section, and of the obligations of insurer of Medi-
care supplement policies under Section 12(1) of this administrative
regulation. The notice shall be communicated within ten (10) work-
ing days of the insurer receiving notification of disenrollment.

Section 13. Standards for Claims Payment.

(1) An Insurer shall comply with 42 U.S.C 1395ss, section
1882(c)(3) of the Social Security Act, by:
(a) Accepting a notice from a Medicare carrier on duly as-
signed claims submitted by participating physicians and suppliers
as a claim for benefits in place of any other claim form required
and making a payment determination on the basis of the informa-
tion contained in that notice;
(b) Notifying the participating physician or supplier and the
beneficiary of the payment determination;
(c) Paying the participating physician or supplier;
(d) Upon enrollment, furnishing each enrollee with a card listing
the policy name, number and a central mailing address to which
notices from a Medicare carrier may be sent;
(e) Paying user fees for claim notices that are transmitted elec-
tronically or in another manner; and
(f) Providing to the Secretary of, at least annually, a central
mailing address to which all claims may be sent by Medicare carri-
ers.

(2) Compliance with the requirements established in Subsec-
tion (1) of this section shall be certified to the Commissioner as
part of the insurer’s annual filing pursuant to KRS 304.3-240.

Section 14. Loss Ratio Standards and Refund or Credit of
Premium.

(1) Loss Ratio Standards.

(a) Pursuant to KRS 304.14-530, a Medicare Supplement
policy form or certificate form shall not be delivered or issued for
delivery in Kentucky unless it is expected to return to policyholders
and certificate holders in the form of aggregate benefits, not includ-
ing anticipated refunds or credits, provided under the policy form or
certificate form which total:

a. At least seventy-five (75) percent of the aggregate amount of
premiums earned in the case of group policies, or
b. At least sixty-five (65) percent of the aggregate amount of
premiums earned in the case of individual policies,
2. The calculation shall be in accordance with accepted actu-
arial principles and practices, and
3. Based on:

(i) Incurred claims experience or incurred health care expenses
if coverage is provided by a health maintenance organization on a
service rather than reimbursement basis; and
(ii) Earned premiums for the period; and

(b) Incurred health care expenses if coverage is provided by a
health maintenance organization shall not include:

(i) Home office and overhead costs,
(ii) Advertising costs, and
(iii) Commissions and other acquisition costs;

v. Capital costs;

vi. Administrative costs; and

vii. Claims processing costs

(b) A filing of rates and rating schedules shall demonstrate that
expected claims in relation to premiums comply with the require-
ments of this section and combined with actual experience to date.
Filings of rate revisions shall also demonstrate that the antici-
pated loss ratio over the entire future period for which the revised
rates are computed to provide coverage can be expected to meet the
appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected
claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the
actual experience since inception;
2. The appropriate loss ratio requirement from Subsection
(1)(a)1a and 2 of this section when combined with actual expe-
rience beginning with July 5, 1996, to date; and
3. The appropriate loss ratio requirement from Subsection
(1)(a)1b and b of this section over the entire future period for which
the rates are computed to provide coverage.

(2) Refund or Credit Calculation.

(a) An insurer shall collect and file with the commissioner by
May 31 of each year the data contained in the applicable reporting
form contained in HL-MS-1 for each type in a standard Medicare
supplement benefit plan:

(b) On the basis of the experience as reported the benchmark
ratio since inception (ratio 1) and the adjusted experience ratio
since inception (ratio 3), then a refund or credit calculation is re-
quired. The refund calculation shall be done on a statewide basis
for each type in a standard Medicare supplement benefit plan. For
purposes of the refund or credit calculation, experience on policies
issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990,
the insurer shall make the refund or credit calculation separately
for all individual policies, including all group policies subject to an
individual loss ratio standard when issued, combined and all other
group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only when the benchmark
loss ratio exceeds the adjusted experience loss ratio and the
amount to be refunded or credited exceeds the level as identified on
the annual refund calculation form HL-MS-1. The refund shall
include interest from the end of the calendar year to the date of
the refund or credit at a rate specified by the Secretary of Health
and Human Services, but in no event shall it be less than the average
rate of interest for thirteen-week Treasury notes. A refund or credit
against premiums due shall be made by September 30 following the
experience year upon which the refund or credit is based.

(3) Annual filing of Premium Rates.

(a) An insurer of Medicare supplement policies and certificates
issued before or after January 14, 1992, in this state shall file an
nually for approval by the commissioner in accordance with the
filing requirements and procedures prescribed by the commissioner
in KRS 304-14-120:

1. Rates;
2. Rating schedule; and
3. Supporting documentation, including ratios of incurred
losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in
accordance with actuarial standards of practice using reasonable
assumptions that the appropriate loss ratio standards can be ex-
pected to be met over the entire period for which rates are com-
puted. The demonstration shall exclude active life reserves.

(c) An expected third-year loss ratio which is greater than or
equal to the applicable percentage shall be demonstrated for poli-
cies or certificates in force less than three (3) years.

(d) As soon as practicable, but prior to the effective date of
enhancements in Medicare benefits, every insurer of Medicare
supplement policies or certificates in this state shall file with the
commissioner, in accordance with KRS 304-14.120:

1.a. Appropriate premium adjustments necessary to produce loss
ratios as anticipated for the current premium for the applicable
policies or certificates. The supporting documents necessary to
justify the adjustment shall accompany the filing.

b. Appropriate premium adjustments necessary to produce an
expected loss ratio under the policy or certificate to conform to
minimum loss ratio standards for Medicare supplement policies
and which are expected to result in a loss ratio at least as great as
that originally anticipated in the rates used to produce current pre-
miums by the insurer for the Medicare supplement policies or cer-
tificates. A premium adjustment which would modify the loss ratio
experience under the policy other than the adjustments described
in this subsection shall not be made with respect to a policy at any
time other than upon its renewal date or anniversary date.

(c) If an insurer fails to make premium adjustments acceptable
to the commissioner, the commissioner may order premium ad-
justments, refunds or premium credits deemed necessary to
achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements, or policy forms
needed to accomplish the Medicare supplement policy or certifi-
cate modifications necessary to eliminate benefit duplications with
Medicare The riders, endorsements, or policy forms shall provide
a clear description of the Medicare supplement benefits provided
by the policy or certificate.

(4) Public Hearings. The commissioner may conduct a public
hearing pursuant to KRS 304.2-510, to gather information concern-
ing a request by an insurer for an increase in a rate for a policy
form or certificate form issued before or after January 1, 1992. If
the experience of the form for the previous reporting period is not
in compliance with the applicable loss ratio standard The deter-
mination of compliance shall be made without consideration of any
refund or credit for the reporting period. Public notice of the hearing
shall be furnished in accordance with KRS 304.2-920.

Section 15. Filing and Approval of Policies and Certificates and
Premium Rates.

(1) An insurer shall not deliver or issue for delivery a policy or
certificate to a resident of Kentucky unless the policy form or certifi-
cate form has been filed with and approved by the commissioner
in accordance with filing requirements and procedures prescribed
by the commissioner in KRS 304.14-120.

(2) An insurer shall file, with the commissioner, any riders or
amendments to policy or certificate forms, issued in Kentucky, to
delete outpatient prescription drug benefits as required by the Medi-
care Prescription Drug, Improvement, and Modernization Act of

(3) An insurer shall not use or change premium rates for a
Medicare supplement policy or certificate unless the rates, rating
schedule and supporting documentation have been filed with and
approved by the commissioner in accordance with KRS 304.14-
120.

(4)(a) Except as provided in Paragraph (b) of this subsection,
an insurer shall not file for approval more than one (1) form of a
policy or certificate of each type for each standard Medicare sup-
plement benefit plan.

(b) An insurer may offer, with the approval of the commissioner,
up to four (4) additional policy forms or certificate forms of the
same type for the same standard Medicare supplement benefit plan,
one (1) for each of the following cases:
1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing
methods;
3. The addition of either guaranteed issue or underwritten cov-

4. The offering of coverage to individuals eligible for Medicare
by reason of disability.

(c) A type of a policy or certificate form shall include:
1. An individual policy;
2. A group policy;
3. An individual Medicare Select policy; or
4. A group Medicare Select policy.

(5)(a) Except as provided in subparagraph 1 of this paragraph,
an insurer shall continue to make available for purchase any policy
form or certificate form issued after January 1, 1992, that has been
approved by the commissioner. A policy form or certificate form
shall not be considered to be available for purchase unless the
insurer has actively offered it for sale in the previous twelve (12)
months.

1. An insurer may discontinue the availability of a policy form or
certificate form if the insurer provides to the commissioner in writ-
ing its decision at least thirty (30) days prior to discontinuing the
availability of the form of the policy or certificate. After receipt of the
notice by the commissioner, the insurer shall not offer for sale the
policy form or certificate form in Kentucky.

2. An insurer that discontinues the availability of a policy form
or certificate form pursuant to subparagraph 1 of this paragraph
shall not file for approval a new policy form or certificate form of the
same type for the same standard Medicare supplement benefit
plan as the discontinued form for a period of five (5) years after the
insurer provides notice to the commissioner of the discontinuance.
The period of discontinuance may be reduced if the commissioner
determines that a shorter period is appropriate.

2. The sale or other transfer of Medicare supplement business
to another insurer shall be considered a discontinuance for the
purposes of this subsection.

(c) A change in the rating structure or methodology shall be
considered a discontinuance under Paragraph (a) of this subsection
unless the insurer complies with the following requirements:
1. The insurer provides an actuarial memorandum, describing
the manner in which the revised rating methodology and resultant
rates differ from the existing rating methodology and existing rates;
and
2. The insurer does not subsequently put into effect a change of
rates or rating factors that would cause the percentage differen-
tial between the discontinued and subsequent rates as described
in the actuarial memorandum to change. The commissioner may
approve a change to the differential that is in the public interest.

(6)(a) Except as provided in Paragraph (b) of this subsection,
the experience of all policy forms or certificate forms of the same
type in a standard Medicare supplement benefit plan shall be com-
bined for purposes of the refund or credit calculation prescribed in
Section 14 of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agree-
ment shall not be combined with the experience of other forms for
purposes of the refund or credit calculation.

(7) An insurer shall not present for filing or approval a rate
structure for its Medicare supplement policies or certificates issued
after October 4, 2005, based upon a structure or methodology with
any groupings of attained ages greater than one (1) year. The ratio
between rates for successive ages shall increase smoothly as age
increases.

Section 16. Permitted Compensation Arrangements.

(1) An insurer or other entity may provide commission or other
compensation to an agent or other representative for the sale of a
Medicare supplement policy or certificate only if the first year
commission or other year compensation is no more than 200
percent of the commission or other compensation paid for selling
or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subse-
quent (renewal) years shall be the same as that provided in the
second year or period and shall be provided for no fewer than five
(5) renewal years.

(3) An insurer or other entity shall not provide compensation to
its agents or other producers and an agent or producer shall not
receive compensation greater than the renewal compensation
payable by the replacing insurer on renewal policies or certificates
if an existing policy or certificate is replaced.


(1) General Rules.

(a) Medicare supplement policies and certificates shall in-
clude a renewal or continuation provision.

2. The language or specifications of a renewal or continuation
provision shall be consistent with the type of contract issued.

3. The renewal or continuation provision shall:
   a. Be appropriately captioned;
   b. Appear on the first page of the policy; and
   c. Include any reservation by the insurer of the right to change
   premiums and any automatic renewal premium increases based on
   the policyholder's age.

(b) A rider or endorsement added to a Medicare supplement
policy after date of issue or at reinstatement or renewal which re-
duce or eliminate benefits or coverage in the policy shall require a
signed acceptance by the insured, except for a nder or endorse-
ment by which an insurer:
a. Effectuates a request made in writing by the insured;
b. Exercises a specifically reserved right under a Medicare
supplement policy or certificates;
c. Is required to reduce or eliminate benefits to avoid duplica-
tion of Medicare benefits.

2. After the date of policy or certificate issue, any nder or en-
dorsement which increases benefits or coverage with a concomi-
tant increase in premium during the policy term shall be agreed to
in writing signed by the insured, unless:
a. The benefits are required by the minimum standards for
Medicare supplement polices; or
b. If the increased benefits or coverage is required by law.

3. If a separate additional premium is charged for benefits
provided in connection with nders or endorsements, the premium
charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not pro-
vide for the payment of benefits based on standards described as
"usual and customary," "reasonable and customary" or words of
similar import.

(d) If a Medicare supplement policy or certificate contains any
limitations with respect to preexisting conditions, these limitations
shall appear as a separate paragraph of the policy and be labeled as
"Preexisting Condition Limitations."

(e) Medicare supplement policies and certificates shall have a
notice prominently printed on the first page of the policy or certifi-
cate, or attached thereto, stating in substance that the policyholder
or certificate holder shall have the right to return the policy or certif-
icate within thirty (30) days of its delivery and to have the premium
refunded if, after examination of the policy or certificate, the in-
sured person is not satisfied for any reason.

(f) Insurers' supplemental and sickness polices or certificates
which provide hospital or medical expense coverage on an ex-
 pense incurred or indemnity basis to persons eligible for Medicare
shall provide to those applicants a Guide to Health Insurance for
People with Medicare in the language, format, type size, type pro-
portional spacing, bold character, and line spacing developed joint-
ly by the National Association of Insurance Commissioners and
Centers for Medicare and Medicaid Services and in a type size
no smaller than twelve (12) point type.

2. Delivery of the guide described in subparagraph 1 of this
paragraph shall be made:
a. Whether or not the policies or certificates are advertised,
solicited or issued as Medicare supplement policies or certificates
as described in this regulation.
b. To the applicant upon application and acknowledgement
of receipt of the guide shall be obtained by the insurer, except that
direct response insurer shall deliver the guide to the applicant upon
request but not later than at policy delivery.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days
prior to the annual effective date of any Medicare benefit changes,
an insurer shall notify its policyholders and certificate holders of
modifications it has made to Medicare supplement insurance poli-
cies or certificates in a format acceptable to the commissioner. The
notice shall:

1. Include a description of revisions to the Medicare program
and a description of each modification made to the coverage pro-
vided under the Medicare supplement policy or certificate, and
2. Inform each policyholder or certificate holder as to if any
premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium ad-
justments shall be in outline form and in clear and simple terms so
as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any
solicitation.

(3) Insurers shall comply with any notice requirements of the
Medicare Prescription Drug, Improvement and Modernization Act

(4) Outline of Coverage Requirements for Medicare Supple-
ment Policies.

(a) An insurer shall provide an outline of coverage to all appli-
cants when an application is presented to the prospective applicant
and, except for direct response policies, shall obtain an acknow-
ledgment of receipt of the outline from the applicant; and

(b) If an outline of coverage is provided at application and the
Medicare supplement policy or certificate is issued on a basis
which would require revision of the outline, a substitute outline of
coverage properly describing the policy or certificate shall accom-
pany the policy or certificate when it is delivered and contain the
following statement, in no less than twelve (12) point type, Imme-
diately above the company name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY.
IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PRO-
VIDED UPON APPLICATION AND THE COVERAGE ORI-
GINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to
this section shall consist of four (4) parts: a cover page, premium
information, disclosure pages, and charts displaying the features of
each benefit plan offered by the insurer. The outline of coverage
shall be in the language and format prescribed in the HL-MS-4 in
no less than twelve (12) point type. All plans shall be shown on the
cover page, and the plans that are offered by the insurer shall be
prominently identified. Premium information for plans that are of-
fered shall be shown on the cover page or immediately following
the cover page and shall be prominently displayed. The premium
and mode shall be stated for all plans that are offered to the pros-
spective applicant. All possible premiums for the prospective appli-
cants shall be illustrated.

(5) Notice Regarding Policies or Certificates Which Are Not
Medicare Supplement Policies.

(a) Any accident and sickness insurance policy or certificate,
other than a Medicare supplement policy, a policy issued pursuant
to a contract under Section 1876 of the Federal Social Security
Act, 42 U.S.C. 1955 et seq., disability income policy, or other policy
identified in Section 422 of the administrative regulations, issued for
delivery in Kentucky to persons eligible for Medicare shall notify
insureds under the policy that the policy is not a Medicare supple-
ment policy or certificate.

2. The notice shall either be printed or attached to the first
page of the outline of coverage delivered to insureds under the
policy, or if no outline of coverage is delivered, to the first page
of the policy, or certificate delivered to insureds.

3. The notice shall be in no less than twelve (12) point type and
shall contain the following language:

"THIS POLICY OR CERTIFICATE IS NOT A MEDICARE SUP-
PLEMENTS (POLICY OR CONTRACT). If you are eligible for Medi-
care, review the Guide to Health Insurance for People with Medi-
care available from the company."

(b) Application for persons eligible for Medicare for the
health insurance policies or certificates described in subsection
(5)(a) of this section shall disclose, using the applicable statement
in HL-MS-3 the extent to which the policy duplicates Medicare. The
disclosure statement shall be provided as a part of, or together
with, the application for the policy or certificate.

Section 18. Requirements for Application Forms and Replace-
ment Coverage.

(1) Comparison statement.

(a) If a Medicare Advantage or Medicare supplement policy or
certificate is to replace another Medicare supplement or Medicare
Advantage policy or certificate, there shall be presented to the
applicant, no later than the application date, HL-4MS-5.

(b) Direct response insurers shall present the comparison
statement to the applicant not later than when the policy is deliv-
ered.

(c) Agents shall

1. Obtain the signature of the applicant on the comparison
statement;
2. Sign the comparison statement; and
3. Send the comparison statement to the insurer and attach a
copy of the comparison statement to the replacement policy.

(2) Application forms shall include the questions on HL-MS-
6 designed to elicit information as to whether, as of the date of the
application:

1. The applicant currently has Medicare supplement, Medicare
Advantage, Medicaid coverage, or another health insurance policy or certificate in force; or

2. A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force.

(b) An agent shall provide the HL-MS-07 to the applicant.

(c) A supplementary application or other form to be signed by the applicant and agent containing the questions as found on the HL-MS-06 and statements on HL-MS-07 may be used.

(3) Agents shall list, on HL-MS-06 or on the supplementary form as identified in subsection (2)(c), any other health insurance policies they have sold to the applicant including

(a) Policies which are still in force; and

(b) Policies sold in the past five (5) years that are no longer in force.

(4) For an insurer that uses direct response, a copy of the application or supplementary form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, any insurer, other than an insurer that uses direct response, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except if the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. An insurer that uses direct response shall deliver to the applicant at issuance of the policy, the notice regarding replacement of Medicare supplement coverage.

(6) The notice required by Subsection (5) of this section for an insurer shall be provided as specified HL-MS-08, in no less than twelve (12) point type or in a form developed by the insurer, which shall:

(a) Meet the requirements of this section;

(b) Be filed with and approved by the commissioner prior to use.

Section 19. Filing Requirements for Advertising and Policy Delivery.

(1) An insurer shall provide a copy of any Medicare supplement advertisement intended for use in Kentucky whether through written, electronic, radio, or television, or any other medium to the commissioner for review prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the insurer.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisement as required by this section. Insurers and agents shall not use "leads" if the solicitation materials have been disapproved by the commissioner.

(3) If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insurer. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipts to the insurer.

Section 20. Standards for Marketing.

(1) An insurer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means on the first page of the policy the following disclosure: "See back of policy for benefit limitations, exclusions, and deductibles."

(d) Inquire and make every reasonable effort to identify if a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the type and amounts of any insurance.

(e) Establish auditable procedures for verifying compliance with subsection (1) of this section.

(2) In addition to the practices prohibited in Subtitle 12 of KRS Chapter 304 and 806 KAR 12:092, the following acts and practices shall be prohibited:

(a) Twisting, making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fear, deceit, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and similar words shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 21. Appropriateness of Recommended Purchase and Excessive Insurance.

(1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of coverage is after the termination date of the individual's Part C coverage.

Section 22. Reporting of Multiple Policies.

(1) On or before March 1 of each year, an insurer shall report to the commissioner the following information, using HL-MS-2, for every individual resident of Kentucky for which the insurer has in force more than one Medicare supplement policy or certificate.

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth in subsection (1) of this section shall be grouped by individual policyholder.

Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates.

(1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probatory periods in the new Medicare supplement policy or certificate to the extent the time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probatory periods.

Section 24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing.

This Section applies to all policies with policy years beginning on or after the effective date of this regulation.

(1) An insurer of a Medicare supplement policy or certificate shall not:

(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a pre-existing condition, on the basis of the genetic information with respect to any individual; and

(b) Discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis...
of the genetic information with respect to any individual.

(2) Nothing in Subsection (1) of this section shall be construed to limit the ability of an insurer, to the extent permitted by law, from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant;

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy, and the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

(3) An Insurer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) of this section shall not be construed to prohibit an Insurer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as described for the purposes of applying the regulations promulgated under part C of title XI of the Social Security Act, 42 U.S.C.A. § 1320d et seq., and section 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 and consistent with Subsection (1) of this section.

(5) For purposes of carrying out Subsection (4) of this section, an Insurer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding Subsection (3) of this Section, an Insurer of a Medicare supplement policy may request, but not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:

(a) The request is made pursuant to research that complies with 45 C.F.R. part 46, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(b) The Insurer clearly indicates to each individual, or if a minor child, to the legal guardian of the child, to whom the request is made, that:

1. Compliance with the request shall be voluntary; and
2. Noncompliance shall have no effect on enrollment status or premium or contribution amounts;

(c) Genetic information collected or acquired under this Subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal or replacement of a policy or certificate;

(d) The Insurer notifies the Secretary in writing that the Insurer is conducting activities pursuant to the exception provided for under this Subsection, including a description of the activities conducted.

(e) The Insurer complies with other conditions as the Secretary may by regulation require for activities conducted under this Subsection.

(7) An Insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(8) An Insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to an individual's enrollment under the policy in connection with enrollment.

(9) If an Insurer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase shall not be considered a violation of Subsection (8) of this section if the request, requirement, or purchase is not in violation of Subsection (7) of this section.

Section 25. Incorporated by Reference.

(1) The following material is corporate by reference:

(a) "HL-MS-1", (July 2009) edition;
(b) "HL-MS-2", (July 2009) edition;
(c) "HL-MS-3", (July 2009) edition;
(d) "HL-MS-4", (July 2009) edition;
(e) "HL-MS-5", (July 2009) edition;
(f) "HL-MS-6", (July 2009) edition;
(g) "HL-MS-7", (July 2009) edition; and
(h) "HL-MS-8", (July 2009) edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's Web site at

SHARON P. CLARK, Commissioner
ROBERT VANCE, Secretary
APPROVED BY AGENCY: June 19, 2009
FILED WITH LRC: June 26, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2009, at 9:30 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposal administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health and Life Division, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms and establishes standards and requirements for Medicare supplement and select policies and certificates.

(b) The necessity of this administrative regulation: This administrative regulation will implement new and amended requirements for Medicare Supplement and Medicare Select policies in accordance with Federal law.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as described in KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.58-150 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish minimum requirements for Medicare Supplement Insurance and Medicare Select Insurance policies and certificates.

(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 not an amendment.

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

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

(d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 90 insurers with a health line of authority who offer or renew Medicare supplement or select policies.

(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: Insurers who have closed blocks of Medicare Supplement business or who continue to offer these policies will continue to follow reporting and refund calculation requirements that were previously established in a different regulation. Insurers who wish to offer new policies will need to file rates and forms to comply with the 2010 standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Insurers should incur minimum costs as a result of the provisions of this administrative regulation since these requirements are the same for each state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurers will be in compliance of federal law and this administrative regulation.

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

(a) Initially: Costs of implementing this administrative regulation on an initial basis are believed to be minimal, if any, for the Department of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal, if any, for the Department of Insurance.

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation will apply equally to all insurers with a health line of authority who wish to offer Medicare Supplement or Medicare Select policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.14-510 authorizes the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes minimum standards Medicare supplement insurance policies and certificates.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON


2. If an insurer chooses to offer or renew Medicare Supplement or Medicare Select Insurance, the insurer is required to comply with the minimum requirements of this administrative regulation, which adopts the NAIC model as required by federal law.

3. Public law 110-233 and 110-275, now codified in the text and notes of 42 U.S.C.A § 1395es require states to adopt the revised version of the NAIC Model law relating to Medicare supplement insurance. Specially the revised model establishes requirements relating to the nondiscrimination of genetic information and provide new and amended benefits for Medicare supplement policies.

4. This administrative regulation adheres to federal requirements as referenced in this analysis.

5. This administrative regulation does not impose a stricter standard than the standards allowed by the NAIC Model and federal law.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Guardianship
(Repealer)

RELATES TO: KRS 210.290(5), 387.510(15)
STATUTORY AUTHORITY: KRS 194A.050(1), 387.760(2), EO 2009-541

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 387.760(2) the Cabinet for Health and Family Services is entitled to receive reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exer-
cise of its assigned guardianship or conservatorship duties and powers. This administrative regulation acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services. 922 KAR 5 060 is no longer applicable because EO 2009-541 transferred the guardianship program and related fiduciary functions to the Department for Aging and Independent Living from the Department for Community Based Services. Compensation for guardianship program services shall no longer be provided under administrative regulation 922 KAR 5 060. These services shall be provided under administrative regulation 910 KAR 2 050, Compensation for Guardianship Program Services.

Section 1. 922 KAR 5 060, Compensation for Guardianship Program Services, is hereby repealed.

DEBORAH S. ANDERSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 13, 2009
FILED WITH LRC: July 13, 2009 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2009, five (5) 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services.
(b) The necessity of this administrative regulation: It is necessary to repeal 922 KAR 5 060 because EO 2009-541 transferred the guardianship program and related fiduciary functions to the Department for Aging and Independent Living from the Department for Community Based Services. Compensation for guardianship program services are now provided in 910 KAR 2 050.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by repealing 922 KAR 5 060 which is no longer applicable for compensation for guardianship program services pursuant to KRS 387.760(2). Compensation under KRS 387.760(2) is covered by a new regulation 910 KAR 2 050.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals a regulation that is no longer applicable to provide compensation for guardianship program services; thus allowing the correct administrative regulation 910 KAR 2 050 to provide the services allowed by KRS 387.760(2)
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation that acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services.
(b) The necessity of the amendment to this administrative regulation: See (2)(a).
(c) How the amendment conforms to the content of the autho-

rizing statutes: See (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There is no type and number of individuals, businesses, organizations, or local governments affected by this administrative regulation. This is a new administrative regulation that acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services. The Department for Aging and Independent Living and the Department for Community Based Services is 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 Department for Community Based Services is no longer responsible for compensation for guardianship program services under 922 KAR 5 060. The Department for Aging and Independent Living will provide these services under 910 KAR 2 050.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no cost to either department under this repealer administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Services will be provided under the correct administrative regulation in accordance with Executive Order 2009-541.
(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: There is no funding to be used for implementation of this administrative regulation. This is a new administrative regulation that acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services.
(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 not an increase in fees or funding. This is a new administrative regulation that acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services.
(8) State whether or not the administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or indirectly increased any fees. This is a new administrative regulation that acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services.
(9) TIERING: Is tiering applied? No tiering applied. This is a new administrative regulation that acts specifically to repeal 922 KAR 5 060, Compensation for Guardianship Program Services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including counties, 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 Community Based Services and the 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 387.760(2)
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This

- 517 -
is a new administrative regulation that acts specifically to repeal 922 KAR 5:060, Compensation for Guardianship Program Services that is currently under the Department for Community Based Services. The requirements under 922 KAR 5:060 shall be provided in 910 KAR 2:050 under the Department for Aging and Independent Living in accordance with EO 2009-541.

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

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

(c) How much will it cost to administer this program for the first year? This is a new administrative regulation that acts specifically to repeal 922 KAR 5:060, Compensation for Guardianship Program Services.

(d) How much will it cost to administer this program for subsequent years? Same as (c).

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:
The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 14, 2009 at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Elizabeth Toft, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the June 2009 meeting were approved.

Present were:
- Members: Senators David Givens, Joey Pendleton, and Elizabeth Toft and Representatives Leslie Combs, Robert Damron, and Jimmie Lee.
- LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrender, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.
- Guests: Tom Crawford, David Gordon, DeVon Hankins, Finance and Administration Cabinet; Richard Carroll, Board of Accountancy; Michael Burleson, Kentucky Board of Pharmacy; Nathan Goldman, Board of Nursing; Margaret Eveson, Dan Figart, Darin Moore, Catherine York, Department of Fish and Wildlife Resources; Mac Stone, Clint Quarles, Kentucky Department of Agriculture; Carrie Baraban, Julia Brooks, Guy Dellus, Kathy Fowler, Paula Goff, Shane O’Donley, Charles Kendall, Stuart Owen, Melanie Randolph, Chandra Venettozzi, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, July 14, 2009, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms 201 KAR 3:00 & E. Property and severance. Tom Crawford, policy advisor, and David Gordon, executive director, represented the department.

In response to a question by Co-Chair Toft, Mr. Crawford stated that this amendment updated forms used for property valuation matters.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A.

Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Accountancy: Board

201 KAR 1:065. Individual license renewal and fee. Richard Carroll, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the Statutory Authority 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 1, 2, and 4, and the material incorporated by reference to comply with the drafting and format requirements of KRS Chapter 13A.

Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 1:100. Continuing professional education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the Necessity, Function, and Conformity paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 4, 6, 7, and 9, and the material incorporated by reference 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 Pharmacy: Board

201 KAR 2:045. Technicians. Michael Burleson, executive director, represented the board.

In response to questions by Senator Givens, Mr. Burleson stated that there were two (2) different formats for certification because two (2) different organizations had programs for certification with different requirements. He stated that the board wanted to require nuclear pharmacy certification pursuant to the standards of a national organization but that there wasn’t such an organization yet. Subcommittee staff stated that the nuclear pharmacy certification provision pertaining to the national organization was too vague and was not compliant with KRS Chapter 13A drafting requirements.

A motion was made and seconded to approve the following amendment: to amend Section 1(2) to put back the original requirement for nuclear pharmacy training at the University of Tennessee. Without objection, and with agreement of the agency, the amendment was approved.

Board of Nursing: Board

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization. Nathan Goldman, general counsel, represented the board.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; (3) to amend Section 2 to establish criteria for approval to: (a) extend the time frame for an interim program administrator; and (b) establish conditions for granting a waiver for the appointment; and (4) to amend Sections 1 through 3 to make technical corrections and comply with the drafting and format requirements of KRS Chapter 13A.

Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:132. Elk depredation permits, landowner permits, and quota hunts. Dann Moore, administrative director, and Catherine York, counsel, represented the department.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Division of Regulation and Inspection: Purchase of Agricultural Conservation Easement Corporation

302 KAR 100:030. Procedures for determination of agricultural productivity diminishment in subdivision. Clint Quarles, staff attorney, and Mac Stone, executive director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(1) to clarify that a homeowner’s election to waive subdivision rights for land restricted by an agricultural conservation easement shall be irrevocable, whether the election is made when the land enters into the easement program or it is made later as an amendment to the easement; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 for clarity and to comply with the drafting and format requirements of KRS Chapter 13A.

Without objection, and with agreement of the agency, the amendments were approved.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan
900 KAR 5.020. State health plan for facilities and services. Carrie Banahan, executive director; Shana O'Donley, policy advisor; and Chandra Venetozzi, data administration, represented the office.
A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to change the edition date of the material incorporated by reference; and (2) to amend the material incorporated by reference to: (a) correct typographical errors; and (b) amend the review criteria for megavoltage radiation equipment. Without objection, and with agreement of the agency, the amendments were approved.

E-Health
900 KAR 7:030. Data reporting by health care providers.
A motion was made and seconded to approve the following amendments: (1) to add a new section requiring Medicare provider-based entities to be separately identifiable through a facility-specific NPI; (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (3) to amend Sections 1 through 5, 8 through 10, and 14 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Health Provider Surveillance Data

Department for Public Health: Division of Public Health Protection and Safety: Hazardous Substances
902 KAR 47:200. Public health methamphetamine contamination. Guy Delius, director; and Kathy Fowler, assistant director, represented the department.
In response to questions by Representative Lee, Mr. Delius stated that the Kentucky State Police made the initial determination of methamphetamine contamination. After a warning sign has been posted by the department pursuant to the Kentucky State Police's findings, a contractor certified by the Energy and Environment Cabinet would do the decontamination. After the decontamination, the warning sign would be removed by the department if approval was granted by the Energy and Environment Cabinet. Subcommittee staff stated that administrative regulations promulgated by the Energy and Environment Cabinet establishing guidelines for the conditions of the removal of the warning signs were already in effect.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 3 to clarify that the sixty (60) day appeal deadline begins as of the postmarked date on the appeal envelope; (5) to amend Section 6 to incorporate two (2) versions of the warning sign, which will allow the division to save money by using up existing copies before printing the new version; and (6) to amend the warning sign to: (a) make technical corrections; (b) correct statutory citations; and (c) provide an edition date on the form. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Provider Operations: Medicaid Services
907 KAR 1:028 & E. Independent laboratory and radiological service coverage and reimbursement. Stuart Owen, regulation coordinator, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 through 3 to comp-ly with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:001E. Repeal of 907 KAR 1:029.

Department for Public Health: Division of Maternal and Child Health: Kentucky Early Intervention System
911 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program services. Julie Brooks, quality assurance administrator, and Charles Kendall, commissioner's office, represented the department.
A motion was made and seconded to approve the following amendments: (1) to amend the Necessity, Function, and Conformity paragraphs to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 2 through 6 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were referred to the August 11, 2009, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Veterinary Examiners: Board
201 KAR 18:015. Fees.
201 KAR 18:015. Fees.

Board of Chiropractic Examiners: Board
201 KAR 21:090 & E. Coursework for two (2) year prechiropractic education.

OFFICE OF THE GOVERNOR: Department of Veterans' Affairs: Kentucky Veterans' Program Trust Fund
201 KAR 37:010 & E. Kentucky Veterans' Program Trust Fund, administration of fund.

TOURISM, ARTS AND HERITAGE CABINET: Kentucky Horse Park Commission: Kentucky Horse Park
300 KAR 7:010. Golf carts, all-terrain vehicles and horse trailers.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply
401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

JUSTICE AND PUBLIC SAFETY CABINET: Office of the Secretary: Special Law Enforcement Officers
500 KAR 2:011. Repeal of 500 KAR 2:010.
500 KAR 2:020. Filing and processing SLEO commissions.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Food Service Programs
702 KAR 6:010. Local responsibilities.
702 KAR 6:020. District school nutrition director
702 KAR 6:075. Reports and funds.
702 KAR 6:080. Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing
810 KAR 1:025. Licensing thoroughbred racing.
Harness Racing
811 KAR 1:070. Licensing standardbred racing.

The Subcommittee adjourned at 1:30 p.m. until August 11, 2009.
VOLUME 36, NUMBER 2 – AUGUST 1, 2009
OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of July 13, 2009

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of July 13, 2009, having been referred to the Committee on July 1, 2009, pursuant to KRS 13A.290(6):

11 KAR 4:060
11 KAR 5:200
11 KAR 18:010
702 KAR 4:160
702 KAR 7:065
735 KAR 1.010 & E
735 KAR 1 020 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A 300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 13, 2009 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of July 29, 2009

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of July 29, 2009, having been referred to the Committee on July 1, 2009, pursuant to KRS 13A.290(6):

815 KAR 7.120
815 KAR 7.125
815 KAR 10 060
815 KAR 20.020
815 KAR 20:060
815 KAR 20.070
815 KAR 20.071
815 KAR 20 074
815 KAR 20.079
815 KAR 20 090
815 KAR 20:100
815 KAR 20:120

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A 030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A 300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 29, 2009 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 36 of the Administrative Register from July, 2009 through June, 2010. 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 35 are those administrative regulations that were originally published in VOLUME 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 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 36 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 2009 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 36 of the Administrative Register, and is mainly broken down by agency.
# LOCATOR INDEX - EFFECTIVE DATES

## VOLUME 35

The administrative regulations listed under VOLUME 35 are those administrative regulations that were originally published in Volume 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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<th>35 Ky.R. Page No.</th>
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B - 3
LOCATOR INDEX - EFFECTIVE DATES

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<th>34 Ky.R. Page No.</th>
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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) Repairal 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.

VOLUME 36

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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ORDINARY ADMINISTRATIVE REGULATIONS:

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B - 5
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* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(/f) Repealer regulation: KRS 13A.310-on the effective date
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<tr>
<td>324 200</td>
<td>201 KAR 11.230</td>
<td>42 U.S.C.</td>
<td>401 KAR 5:005</td>
</tr>
<tr>
<td>324 201</td>
<td>201 KAR 11.230</td>
<td>401 KAR 5:055</td>
<td></td>
</tr>
<tr>
<td>324 201</td>
<td>201 KAR 11.230</td>
<td>401 KAR 60:005</td>
<td></td>
</tr>
<tr>
<td>324 201</td>
<td>201 KAR 11.230</td>
<td>502 KAR 20:020</td>
<td></td>
</tr>
<tr>
<td>324 282</td>
<td>201 KAR 11.230</td>
<td>806 KAR 17:570</td>
<td></td>
</tr>
<tr>
<td>324 284</td>
<td>201 KAR 11.230</td>
<td>907 KAR 3:183</td>
<td></td>
</tr>
<tr>
<td>329 010-329.030</td>
<td>502 KAR 20:020</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338</td>
<td>803 KAR 2:311</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 031</td>
<td>803 KAR 2:417</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 051</td>
<td>803 KAR 2:300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:306</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:308</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:320</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:402</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:403</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:425</td>
<td></td>
<td></td>
</tr>
<tr>
<td>338 061</td>
<td>803 KAR 2:500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>344 030</td>
<td>803 KAR 2:306</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 110</td>
<td>803 KAR 2:306</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 120</td>
<td>803 KAR 2:308</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 520</td>
<td>803 KAR 2:320</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 550</td>
<td>803 KAR 2:402</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 550</td>
<td>803 KAR 2:403</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 550</td>
<td>803 KAR 2:425</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 550</td>
<td>803 KAR 2:500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 590</td>
<td>803 KAR 2:500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 739</td>
<td>805 KAR 1:070</td>
<td></td>
<td></td>
</tr>
<tr>
<td>353 901</td>
<td>805 KAR 1:070</td>
<td></td>
<td></td>
</tr>
<tr>
<td>387 510</td>
<td>805 KAR 1:190</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24 C.F.R.</td>
<td>910 KAR 2:051</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26 C.F.R.</td>
<td>201 KAR 11:121</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29 C.F.R.</td>
<td>105 KAR 1:390</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29 C.F.R.</td>
<td>803 KAR 2:300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29 C.F.R.</td>
<td>803 KAR 2:306</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

B - 10
SUBJECT INDEX

AGING AND INDEPENDENT LIVING
Guardianship
Repeal of 922 KAR 5.060

AIR QUALITY, DIVISION OF
40 C.F.R. Part 60 standards of performance for new stationary sources; 401 KAR 60:005
Repeal of 401 KAR 60:60; 401 KAR 60:671

BARBERING, BOARD OF
Barbering school enrollment and postgraduate requirements; 201 KAR 14:105

EDUCATION, DEPARTMENT OF
Assessment and Accountability
Administration Code for Kentucky’s Educational Assessment Program; 703 KAR 5:080
Repeal of 701 KAR 5 031; 703 KAR 5 035
School Terms, Attendance and Operation
Pupil attendance; 702 KAR 7:125
School District Calendar; 702 KAR 7:140

EDUCATION PROFESSIONAL STANDARDS BOARD
Advanced Certification and Rank
Continuing education option for certificate renewal and rank change; 16 KAR 8 030

ENERGY DEVELOPMENT AND INDEPENDENCE, DEPT FOR
Division of Oil and Gas Conservation
Administrative fees and general information associated with oil and gas permits; 805 KAR 1:200
Directional and horizontal wells; 805 KAR 1:140
Gathering lines; 805 KAR 1:190
Plugging wells; coal-bearing strata; 805 KAR 1.070
Well location and as-drilled location plat, preparation, form and contents; 805 KAR 1.030

ENERGY AND ENVIRONMENT CABINET
Air Quality, Division of (See Air Quality, Division of)
Energy Development and Independence, Department for (See Energy Development and Independence, Department for)
Environmental Protection, Department for (See Environmental Protection, Department for)

ENVIRONMENTAL PROTECTION, DEPT FOR
Water, Division of (See Water, Division of)

FINANCE AND ADMINISTRATION CABINET
Revenue, Department of; KAR Title 103 (See Revenue, Department of)
Retirement Systems, Kentucky; KAR Title 105 (See Kentucky Retirement Systems)

FISH AND WILDLIFE RESOURCES; DEPT OF
Game
Hunting and trapping seasons and limits for furbearers; 301 KAR 2:251

GENERAL GOVERNMENT CABINET
Barbering, Board of; 201 KAR Chapter 14 (See Barbering, Board of)
Hairdressers and Cosmetologists; 201 KAR Chapter 12 (See Hairdressers and Cosmetologists, Board of)
Nursing, Board of; 201 KAR Chapter 20 (See Nursing, Board of)
Real Estate Commission
Broker management course; 201 KAR 11:450
Continuing education requirements; 201 KAR 11.230
Disciplinary proceedings; 201 KAR 11:190
Improper conduct; 201 KAR 11:121
License recognition; application requirements; 201 KAR 11.215
Listing and purchase contracts and other agreements entered into by licensees; provisions required; seller-initiated re-listing request disclosure form; 201 KAR 11:250
Use of facsimiles and electronic-mail transmissions; electronic storage; 201 KAR 11:300

HAIRDRESSERS AND COSMETOLOGISTS, BOARD
Hairdressers and Cosmetologist
School Districts, 201 KAR 12:105

HEALTH AND FAMILY SERVICES, CABINET FOR
Aging and Independent Living 910 KAR Chapter 2 (See Aging and Independent Living)
Certificate of Need; KAR Title 900 (See Health Policy, Office of)
Health Policy; KAR Title 900
Medicaid Services, Department for 907 KAR Chapter 3 (See Medicaid Services, Department for)

HEALTH POLICY, OFFICE OF
Certificate of Need
Repeal of 900 KAR 6.050; 900 KAR 6:051
Certificate of Need administrative esclations, 900 KAR 6.095
Certificate of Need advisory opinions; 900 KAR 6:105
Certificate of Need annual surveys, and registration requirements for new magnetic resonance imaging units; 900 KAR 6:125
Certificate of Need application process, 900 KAR 6.065
Certificate of Need considerations for formal review; 900 KAR 6.070
Certificate of Need critical access hospitals, swing beds, and certification of continuing care retirement communities; 900 KAR 6:115
Certificate of Need emergency circumstances; 900 KAR 6 080
Certificate of Need filing, hearing and show cause hearing; 900 KAR 6.090
Certificate of Need forms; 900 KAR 6.055
Certificate of Need nonsubstantive review, 900 KAR 6:075
Certificate of Need notification of the addition or establishment of a health service, or notification of the reduction or termination of a health service, or reduction of bed capacity, or notice of intent to acquire a health facility or health service; 900 KAR 6:110
Certificate of Need pilot projects; 900 KAR 6:120
Certificate of Need standards for Implementation and biennial review; 900 KAR 6:100
Timetable for submission of certificate of need applications; 900 KAR 6:060
Transfers of Certificate of Need; 900 KAR 6:085

KENTUCKY HORSE RACING COMMISSION
Thoroughbreds
Stewards; 810 KAR 1:004
Harness Racing
Race officials, 811 KAR 1:015

HOUSING, BUILDINGS, AND CONSTRUCTION, DEPT OF
Division of Heating, Ventilation and Air Conditioning
Repeal of 815 KAR 8:040; 815 KAR 8.041
Division of Plumbing
Minimum fixture requirements; 815 KAR 20:191
Division of Building Code Enforcement
Electrical continuing education procedure; 815 KAR 35:100

INSURANCE, DEPARTMENT OF
Financial Standards and Examination Division (806 KAR Chapters 3 and 6)
<table>
<thead>
<tr>
<th>Subject Index</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actuarial opinion and memorandum; 806 KAR 6:100</td>
<td></td>
</tr>
<tr>
<td>Standards for insurers deemed to be in hazardous financial condition; 806 KAR 3 150</td>
<td></td>
</tr>
<tr>
<td>Health Insurance Contracts</td>
<td></td>
</tr>
<tr>
<td>Kentucky access requirements; 806 KAR 17:320</td>
<td></td>
</tr>
<tr>
<td>Minimum standards for Medicare supplement insurance policies and certificates; 806 KAR 17:570</td>
<td></td>
</tr>
<tr>
<td>Repeal of 806 KAR 17:390, 806 KAR 17:400, 806 KAR 17:410, 806 KAR 17:420 and 806 KAR 17:391E</td>
<td></td>
</tr>
<tr>
<td>Surplus Lines</td>
<td></td>
</tr>
<tr>
<td>Reporting requirement for broker's statement and surplus lines tax; 806 KAR 10:030</td>
<td></td>
</tr>
<tr>
<td>Surplus lines affidavits; 806 KAR 10:050</td>
<td></td>
</tr>
<tr>
<td>JUSTICE AND PUBLIC SAFETY CABINET</td>
<td></td>
</tr>
<tr>
<td>Operations Division</td>
<td></td>
</tr>
<tr>
<td>Methamphetamine; 502 KAR 47:010</td>
<td></td>
</tr>
<tr>
<td>Technical Services Division</td>
<td></td>
</tr>
<tr>
<td>Detection of deception examiners; 502 KAR 20:020</td>
<td></td>
</tr>
<tr>
<td>KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY</td>
<td></td>
</tr>
<tr>
<td>Kentucky Loan Program</td>
<td></td>
</tr>
<tr>
<td>Administrative wage garnishment; 11 KAR 3:100</td>
<td></td>
</tr>
<tr>
<td>KHEAA Grant Programs</td>
<td></td>
</tr>
<tr>
<td>CAP grant award determination procedure; 11 KAR 5:145</td>
<td></td>
</tr>
<tr>
<td>KENTUCKY RETIREMENT SYSTEMS</td>
<td></td>
</tr>
<tr>
<td>General Rules</td>
<td></td>
</tr>
<tr>
<td>Employment after retirement; 105 KAR 1:390</td>
<td></td>
</tr>
<tr>
<td>KENTUCKY STATE POLICE, KENTUCKY STATE POLICE</td>
<td></td>
</tr>
<tr>
<td>(See Justice and Public Safety Cabinet)</td>
<td></td>
</tr>
<tr>
<td>LABOR CABINET</td>
<td></td>
</tr>
<tr>
<td>Workplace Standards, Department of; 803 Chapter 2 (See Workplace Standards, Department of)</td>
<td></td>
</tr>
<tr>
<td>MEDICAID SERVICES, DEPT FOR</td>
<td></td>
</tr>
<tr>
<td>Healthcare Management, Division for Payments and Services</td>
<td></td>
</tr>
<tr>
<td>Supplemental payments to participating DRG hospitals, 907 KAR 3:183</td>
<td></td>
</tr>
<tr>
<td>NURSING, BOARD OF</td>
<td></td>
</tr>
<tr>
<td>Applications for licensure and registration; 201 KAR 20 370</td>
<td></td>
</tr>
<tr>
<td>Fees for applications and for services; 201 KAR 20:240</td>
<td></td>
</tr>
<tr>
<td>Sexual assault nurse examiner program standards and credential requirements, 201 KAR 20:411</td>
<td></td>
</tr>
<tr>
<td>PERSONNEL CABINET</td>
<td></td>
</tr>
<tr>
<td>Personnel Cabinet, Classified</td>
<td></td>
</tr>
<tr>
<td>Certification and selection of eligibles for appointment, 101 KAR 2:066</td>
<td></td>
</tr>
<tr>
<td>Classified leave administrative regulations; 101 KAR 2:102</td>
<td></td>
</tr>
<tr>
<td>Incentive programs; 101 KAR 2:120</td>
<td></td>
</tr>
<tr>
<td>Personnel Cabinet, Unclassified</td>
<td></td>
</tr>
<tr>
<td>Leave administrative regulations for the unclassified service; 101 KAR 3:015</td>
<td></td>
</tr>
<tr>
<td>PUBLIC PROTECTION CABINET</td>
<td></td>
</tr>
<tr>
<td>Insurance, Department of; KAR Title 906 (See Insurance, Department of)</td>
<td></td>
</tr>
<tr>
<td>Kentucky Horse Racing Commission; KAR Titles 810 and 811(See Kentucky Horse Racing Commission)</td>
<td></td>
</tr>
<tr>
<td>Housing, Buildings, and Construction, Department of; 815 KAR Chapter 25 (See Building Code Enforcement, Division of)</td>
<td></td>
</tr>
<tr>
<td>REAL ESTATE APPRAISERS BOARD</td>
<td></td>
</tr>
<tr>
<td>Definitions for 201 KAR Chapter 30; 201 KAR 30.010</td>
<td></td>
</tr>
<tr>
<td>Distance education standards; 201 KAR 30 180</td>
<td></td>
</tr>
<tr>
<td>Examination, continuing education, and experiences requirement; 201 KAR 30:050</td>
<td></td>
</tr>
<tr>
<td>Grievances; 201 KAR 30:070</td>
<td></td>
</tr>
<tr>
<td>Types of appraisers required in federally-related transactions; certification and licensure; 201 KAR 30 030</td>
<td></td>
</tr>
<tr>
<td>KENTUCKY RETIREMENT SYSTEMS</td>
<td></td>
</tr>
<tr>
<td>General Rules</td>
<td></td>
</tr>
<tr>
<td>Employment after retirement; 105 KAR 1:390</td>
<td></td>
</tr>
<tr>
<td>LABOR CABINET</td>
<td></td>
</tr>
<tr>
<td>Workplace Standards, Department of; 803 Chapter 2 (See Workplace Standards, Department of)</td>
<td></td>
</tr>
<tr>
<td>RETIREMENT SYSTEMS</td>
<td></td>
</tr>
<tr>
<td>(See Kentucky Retirement Systems)</td>
<td></td>
</tr>
<tr>
<td>REVENUE, DEPARTMENT OF</td>
<td></td>
</tr>
<tr>
<td>General Administration</td>
<td></td>
</tr>
<tr>
<td>Forms</td>
<td></td>
</tr>
<tr>
<td>Sales and telecommunications forms manual; 103 KAR 3:020</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous taxes forms manual; 103 KAR 3:050</td>
<td></td>
</tr>
<tr>
<td>TOURISM, ARTS, AND HERITAGE CABINET</td>
<td></td>
</tr>
<tr>
<td>Fish and Wildlife Resources, Department of; 301 KAR Chapter 2 (See Fish and Wildlife Resources; Department of)</td>
<td></td>
</tr>
<tr>
<td>TRANSPORTATION CABINET</td>
<td></td>
</tr>
<tr>
<td>Department of Highways</td>
<td></td>
</tr>
<tr>
<td>603 KAR 5:230</td>
<td></td>
</tr>
<tr>
<td>WATER, DIVISION OF</td>
<td></td>
</tr>
<tr>
<td>Compliance Assistance, Division of</td>
<td></td>
</tr>
<tr>
<td>Board's of Certification, 401 KAR 11:010</td>
<td></td>
</tr>
<tr>
<td>Definition for 401 KAR Chapter 11; 401 KAR 11:001</td>
<td></td>
</tr>
<tr>
<td>Operator certification; 401 KAR 11:050</td>
<td></td>
</tr>
<tr>
<td>Standards of professional conduct for certified operators; 401 KAR 11:020</td>
<td></td>
</tr>
<tr>
<td>Wastewater treatment and collection system operators; classification and qualifications; 401 KAR 11:030</td>
<td></td>
</tr>
<tr>
<td>Water treatment and distribution system operators; classification and qualifications; 401 KAR 11:040</td>
<td></td>
</tr>
<tr>
<td>Public Safety Water</td>
<td></td>
</tr>
<tr>
<td>Water treatment plant and water distribution system classification and staffing; 40 KAR 8 030</td>
<td></td>
</tr>
<tr>
<td>Water Quality</td>
<td></td>
</tr>
<tr>
<td>Surface water permit fees; 401 KAR 5:310</td>
<td></td>
</tr>
<tr>
<td>WORKPLACE STANDARDS, DEPARTMENT OF</td>
<td></td>
</tr>
<tr>
<td>Occupational Safety and Health</td>
<td></td>
</tr>
<tr>
<td>Fire protection; 803 KAR 2:231</td>
<td></td>
</tr>
<tr>
<td>General; 803 KAR 2:300</td>
<td></td>
</tr>
<tr>
<td>General Safety; 803 KAR 2:402</td>
<td></td>
</tr>
<tr>
<td>Maritime; 803 KAR 2:500</td>
<td></td>
</tr>
<tr>
<td>Occupational health and environmental controls; 803 KAR 2:306; 803 KAR 2 403</td>
<td></td>
</tr>
<tr>
<td>Personal protective equipment; 803 KAR 2:308</td>
<td></td>
</tr>
<tr>
<td>Steel erection; 803 KAR 2:417</td>
<td></td>
</tr>
<tr>
<td>Toxic and hazardous substances; 803 KAR 2 320, 803 KAR 2 425</td>
<td></td>
</tr>
</tbody>
</table>